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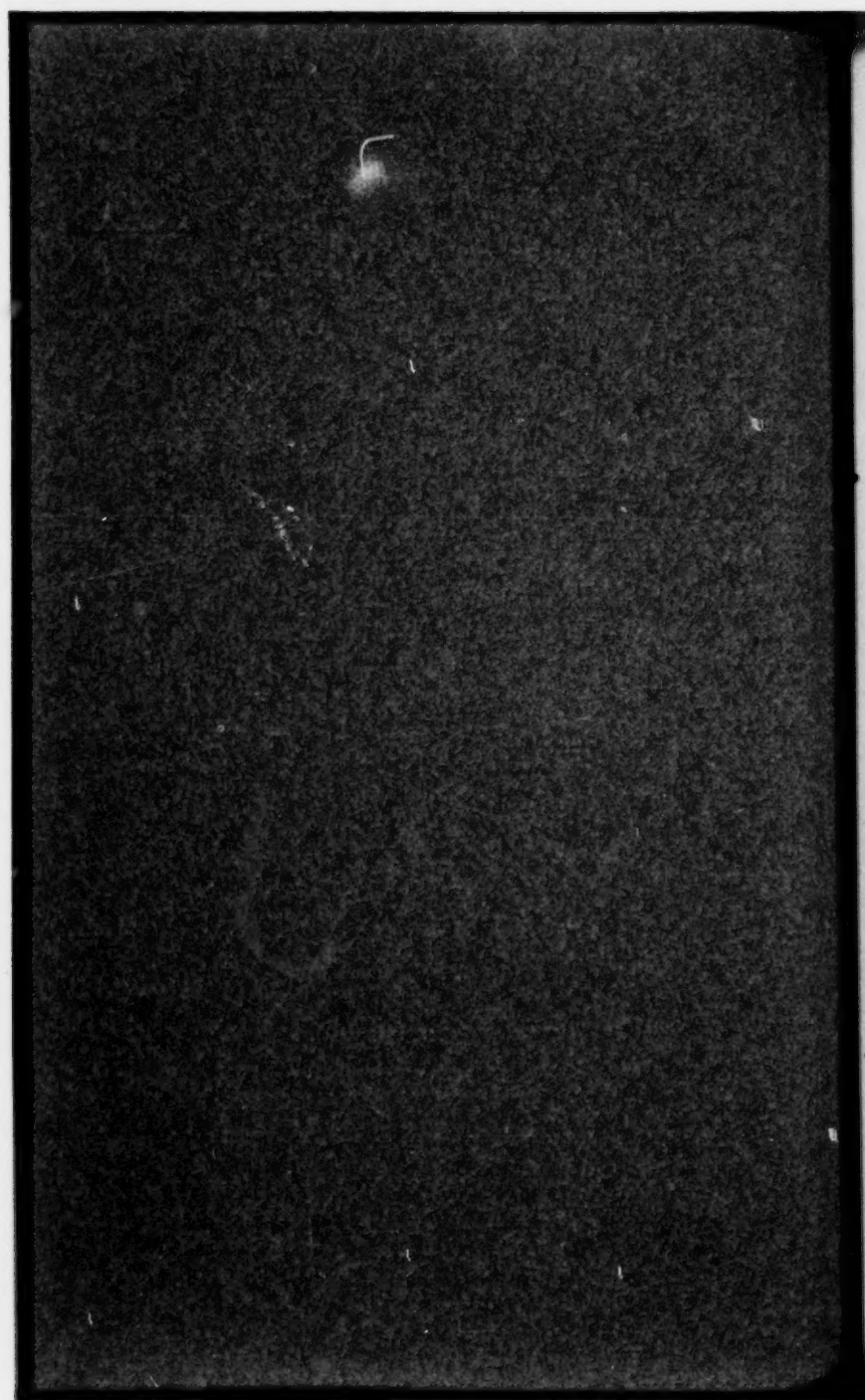
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INDEX.

POINTS.

	PAGE
STATEMENT OF THE CASE.....	2-49
I. Corporate proceedings of Alice Company touching sale of its properties to Anaconda Copper Mining Company and attempted dissolution of Alice Company	2-4
II. Relations existing between the Alice Company and Anaconda Company at time of the transfer	5-8
III. Value of Alice property in the year 1910, and character of the mineral contained therein.....	8-36
IV. The corporate business of Alice had become unprofitable and could not be carried on by the corporation; there were insufficient funds to continue the business and no money with which to pay existing indebtedness. The corporation was in failing circumstances and, insofar as its financial condition affected its business prospects, was in fact insolvent	36-38
V. The evidence fails to disclose any violation of the Sherman Anti-Trust Law in connection with the acquisition of the Alice properties, or otherwise, but expressly and affirmatively shows to the contrary.....	38-46
VI. Findings of the District Court.....	46-47
VII. Findings of the Court of Appeals.....	47-49
VIII. General contentions of Appellees upon this appeal.	49

II

	PAGE
ARGUMENT.....	50-198
I. Introductory statement	50-52
II. A conveyance of all the property of the Alice was expressly authorized by its Articles of incorporation and by the statutory law of the State of Utah ..	52-72
III. The general rule that corporations must have unanimous consent of all stockholders in order to dispose of their property has no application in Utah.	72-73
IV. The findings of the District Court and Court of Appeals that the majority stockholders of the Alice Company had full power to dispose of all its property by reason of its financial condition, the state of its property and corporate business and its inability to further carry out the purposes for which it was created is fully supported by both the law and the evidence.....	73-79
V. Both the District Court and the Court of Appeals erred in holding that by reason of unity of control of the Alice Company and Anaconda Company the burden of proof rested upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that the burden was not discharged.....	80-89
VI. The subsequent ratification of the contract of sale by the stockholders of the Alice Company renders the question of common directors immaterial.	90-91

III

PAGE

VII. The sale of the Alice property was wise, and also advantageous to the Alice Company	91-96
VIII. No officer of the Alice Company concealed any material facts from the Alice stockholders.....	96-100
IX. Under the circumstances of this case the conveyance in question is not affected by the fact that the consideration paid therefor was capital stock of the Anaconda Company.....	100-111
X. The contract of sale having been fully executed, the contention that Alice Company had no power to transfer for capital stock cannot now be urged by a stockholder of Alice in behalf of that corporation.....	112-114
THE SHERMAN ANTI-TRUST LAW.....	115
I. The Sherman Anti-Trust Law cannot be invoked by stockholders of a selling corporation to rescind an executed sale upon the ground that the buying corporation exists in contravention of the Sherman Anti-Trust Law.....	115-132
II. The purchase of the Alice properties would not tend to effectuate any illegal purpose to monopolize interstate commerce in copper, as alleged in complainants' bill, and would therefore neither be illegal nor against public policy.....	133-134
III. Neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company was at the time of the	

IV

PAGE

purchase of the Alice properties, neither had they ever been, illegal combinations in restraint of interstate commerce, and the Anaconda Company, under the circumstances disclosed in this case, had the legal right to acquire the Alice properties for the purposes and in the manner in which they were acquired..... 135-180

THE INTERLOCUTORY DECREE WAS RIGHT..... 181

- I. Although the findings of fact made by the court be not disturbed, and be held by this court to be justified by the testimony in the case, the decree of the court is nevertheless correct and should, in all respects, be affirmed.....181-198

CASES CITED.

	PAGE
Adams Mining Co. <i>v.</i> Senter, 26 Mich. 73.....	84
Addyston Pipe & Steel Co. <i>v.</i> U. S., 175 U. S. 211, 244.....	170
Allen <i>v.</i> Ajax Mining Co., 30 Mont. 490.....	58
American Tobacco Co. <i>v.</i> U. S., 221 U. S. 185	125
Ames <i>v.</i> Am. Tel. & Tel. Co., 166 Fed. 820...	116
Bigelow <i>v.</i> Calumet, etc., Co., 155 Fed. 869, 876; 167 Fed. 704; 167 Fed. 721.....	123, 150
Blindell <i>et al.</i> <i>v.</i> Hagan, 54 Fed. 41.....	116
Block <i>v.</i> Standard Distilling & Dist. Co., 95 Fed. 979.....	116
Blythe <i>v.</i> Hinckley, 84 Fed. 234.....	89
Booth <i>v.</i> Robison, 55 Md. 419.....	84
Bowditch <i>v.</i> Jackson Co., 82 Atl. 1014, 1018	75, 95, 193
Bowman <i>v.</i> Foster & Logan Hdw. Co., 94 Fed. 592.....	114
Boyd <i>v.</i> New York & H. R. Co., 220 Fed. 179	126
Buffalo and N. Y. Cen. R. R. Co. <i>v.</i> Dudley, 4 Kernan 575.....	61
Byrne <i>v.</i> Schuyler Elec. Mfg. Co., 65 Conn. 348	106
Camors-McConnell Co. <i>v.</i> McConnell, 140 Fed. 415.....	126
Celluloid Mfg. Co. <i>v.</i> Cellonite Mfg. Co., 40 Fed. 476.....	89
Chicago Junction Ry. Co. <i>v.</i> King, 222 U. S. 220, 224.....	132
Clark & Marshall on Corporations, page 531.	105
Clark & Marshall on Private Corporations, p. 551, 553, 554.....	114
Connolly <i>v.</i> Union Sewer Pipe Co., 184 U. S. 540, 547.....	126
Cook on Corporations, 6th Ed. 658.....	90

	PAGE
Cook on Corporations, 7th Éd., Vol. 2, Sec. 639, p. 1972.....	69
Corey <i>et al.</i> v. Independent Ice Co., 207 Fed. 459.....	116
Cummings v. Parker, 157 S. W. 629.....	75
Cyclopedia of Law & Procedure, Vol. 16, page 478.....	190
Davis v. U. S. Elec. Power & L. Co., 77 Md. 35.....	84
Deitch v. Staub, 115 Fed. 317.....	89
Detroit United Ry. v. Michigan, 242 U. S. 238-249.....	68
Diamond Match Co. v. Kover, 106 N. W. 374	129
Durfee v. Old Colony & Falls River Ry. Co. <i>et al.</i> , 5 Allen (Mass.) 240.....	61
Eichel <i>et al.</i> v. U. S. Fidelity & Guaranty Co., 245 U. S. 102.....	132
Evansville Pub. Hall Co. v. Bank, 42 N. E. 1097.....	85
Fairbank (N. K.) Co. v. Windsor, 124 Fed. 202	89
First Nat. Bank v. Nat. Ex. Bank, 92 U. S. 122.....	108
Flag v. Manhattan Ry. Co., 10 Fed. 413, 433.	84
Fleitmann v. Welsbach Co., 240 U. S. 27, 29.....	114, 116, 122, 124
Forrester v. B. & M. Co., 21 Mont. 544.....	67, 74
Garey v. St. Joe Mining Co. (Utah), 91 Pac. 369.....	61, 66
Germer <i>et al.</i> v. Triple Steel, etc., Co., 54 S. E. 509.....	61
Greenwood v. Freight Co., 105 U. S. 13.....	69
Greer Mills & Co. v. Stroller, 77 Fed. 2.....	116
Gulf C. & S. Ry. Co. v. Miami Co., 86 Fed. 207	116
Hamilton Gas Light Co. v. Hamilton City, 146 U. S. 270.....	61
Hayden v. Official Hotel Red Book, etc., Co., 42 Fed. 875.....	75

VII

	PAGE
Hiles <i>v.</i> Hiles & Co., 120 Ill. App. 617.....	85
Hodges <i>v.</i> New England Screw Co., 1 R. I. 347, 53 Am. Dec. 624.....	105, 107
Holmes & Gregg Mfg. Co. <i>v.</i> Holmes & Co., 127 N. Y. 252.....	107
Holmes & Griggs Co. <i>v.</i> Metal Co., 24 Am. St. Rep. 452.....	114
Houston, etc., <i>v.</i> Texas, 44 U. S. L. Ed. 688	126, 130
Illinois Trust & Sav. Bank <i>v.</i> Pacific Ry. Co., 117 Cal. 332.....	131
International Harvester Co. <i>v.</i> Missouri, 234 U. S. 199.....	160, 172
Kohler <i>v.</i> St. Mary's Brewing Co. <i>et al.</i> , 77 Atl. 1016.....	192
Lang <i>v.</i> Reservation M. & S. Co., 93 Pac. 208	54
Leathers <i>v.</i> Janney, 41 La. Ann. 1120.....	84
Leavenworth Co. <i>v.</i> Chicago R. Co., 134 U. S. 688.....	85
Long <i>v.</i> Georgia Pac. Ry. Co., 91 Ala. 519...	131
Looker <i>v.</i> Maynard, 179 U. S. 46.....	61
Louisville & Nashville R. Co. <i>v.</i> Garrett, 231 U. S. 298-315.....	71
McCutcheon <i>v.</i> Merz Capsule Co., 71 Fed. 787	106
Maben <i>v.</i> Gulf Coal & Coke Co., 56 So. 607..	54
McGinniss <i>v.</i> Boston & Montana Co., 29 Mont. 428.....	102, 145
Market St. Ry. Co. <i>v.</i> Hellman, 109 Cal. 571.	61
Mason <i>v.</i> Pewabic Mining Co., 133 U. S. 50..	181
Merriam (C. & G.) Co. <i>v.</i> Syndicate Pub. Co., 237 U. S. 618.....	132
Metcalf <i>v.</i> Am. Furn. Co., 108 Fed. 909.....	123
Metcalf <i>v.</i> American School, etc., Co., 122 Fed. 115.....	126, 127, 132
Met. Tel. Co., etc., <i>v.</i> The Domestic, etc., Tel. Co., 44 N. J. Equity 568.....	90
Miller <i>v.</i> Fleming & Fox Co., 59 S. W. 512...	114

	PAGE
Miners' Ditch Co. v. Zellerbach, 37 Cal. 543, 99 Am. Dec. 300.....	75, 114
Missouri R. R. Co. v. Kansas, 216 U. S. 274..	61
Moore on Interstate Commerce, Sec. 387.....	168
Moore on Interstate Commerce, Sec. 355.....	134
Morawetz. Columbia Law Review, Dec., 1910, Vol. 10, p. 687.....	167
Nor. Securities Co. v. U. S., 193 U. S. 197, 331.....	172
Northwest Trans. Co. v. Boston Marine Ins. Co., 41 Fed. 796.....	89
O'Halloran v. Am. Sea Green Slate Co., 207 Fed. 187, 189, 191.....	173
Paine Lumber Co. v. Neal, 244 U. S. 459, 471.....	116, 122
Pauly v. Pauly, 107 Cal. 8, 48 Am. St. Rep. 98	83
Peabody v. Westerly Waterworks, 37 Atl. 807	75
Pidcock v. Harrington <i>et al.</i> , 64 Fed. 821....	116
Pitcher v. Lone Pine Con. Min. Co., 81 Pac. 1047.....	54
Planter's Bank v. Union Bank, 16 Wallace 500.....	131
Price v. Holcomb, 56 N. W. 407, 411.....	75
R. R. Co. v. Johnson, 58 Kansas, 175, 48 Pac. 847.....	114
Reclamation Dist. No. 70 v. Birks, 113 Pac. 171.....	83
Roemer v. Neumann, 26 Fed. 333.....	89
Salt Lake Auto Motor Co. v. Keith-O'Brien Co. <i>et al.</i> , 143 Pac. 1015.....	67
Santa Cruz v. Wykes, 202 Fed. 371, 372..	114, 126, 130
San Diego v. Pacific Beach Co., 112 Cal. 53, 33 L. R. A. 788, note.....	82
Savings Bank v. O'Reilly, 10 S. W. 865.....	75
Schenectady & Saratoga Plank Road Co. v. Thatcher, 11 N. Y. Court of Appeals, 114.	60

	PAGE
Sewell v. East Cape May Beach Co., 25 Atl. 929.....	75
Sou. Ind. Express Co. v. U. S. Express Co., 88 Fed. 660.....	116
Sou. Ry. Co. v. Gadd, 233 U. S. 272, 276.....	132
Standard Oil Co. v. United States, 221 U. S. 1.....	153, 167, 169, 174
Stewart v. Lehigh Valley Ry. Co., 38 N. J. Law, 505.....	82
Street, Federal Equity Practice, Vol. 2, Sec. 1918.....	89
Swift & Co. v. U. S., 196 U. S. 375, 396, 402...	169
Taft, Wm. H., "The Anti-Trust Act and the Supreme Court ".....	141
Thompson on Corporations, 2nd Ed., Sec. 67.	59
Thompson on Corporations, Section 90	59
Thompson on Corporations, Sec. 1241.....	85
Thompson on Corporations, 2nd Ed., 411-414.	69
Thompson on Corporations, 2nd Ed., Sec. 2424.....	75
Thompson on Corporations, 2nd Ed., Sec. 2429	51, 74, 75
Thompson on Corporations, Secs. 4063, 4065, 4066.....	105
Thompson on Corporations, Sec. 4064.....	104
Thompson on Corporations, Vol. 4, Sec. 5408.	58
Traer v. Lucas Prospecting Co., 99 N. W. 290.	54, 75
Treadwell v. Salisbury Mfg. Co., 7 Gray, 393.....	74, 106, 107
Union Pac. Ry. Co. v. Credit Mobilier, 135 Mass. 367, 377.....	84
U. S. v. American Tobacco Co., 221 U. S. 106, 178.....	155, 157
U. S. v. E. I. DuPont de Nemours & Co., 188 Fed. 127, 150.....	139, 173, 178
U. S. v. Freight Assn., 166 U. S. 334.....	172
U. S. v. International Harvester Co., 214 Fed. 987.....	160, 164

	PAGE
U. S. v. Union Pac. Ry. Co., 226 U. S. 61, 92, 86.....	171
U. S. Rolling Stock v. Atlantic R. Co., 34 Ohio St., 459.....	85
Veener v. U. S. Steel Co., 116 Fed. 1013.....	61
Vicksburg v. Waterworks Co., 202 U. S. 453, 467.....	68
Wheeler <i>et al.</i> v. Abilene Nat. Bank Bldg. Co., 159 Fed. 391.....	191
Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165, 59 L. Ed. 521, pages 173-176.	116, 117, 126, 129, 132
Williams v. Nall, 108 Ky. 21, 55 S. W. 706..	61
Yazoo & Miss. R. R. Co. v. Wright, 238 U. S. 376, 378.....	132
Zabriski v. Hackensack, etc., Ry. Co., 3 C. E. Green 178, 90 Am. Dec. 617.....	59

STATUTES CITED.

Clayton Act., 38 Stat. at L. 730, 737. Act of Oct. 15th, 1914, Chap. 223, Sec. 16.....	68, 122
Montana Legislature. Act 1899. House Bill 132.....	58
Sherman Anti-Trust Act, 26 Stat. at L. 209. 115, 117, 118, 121, 132, 166	
Utah Constitution, Article 12, Section 1.....	57, 66
Utah Constitution, Article 12, Section 13.....	103
Utah Legislature, Act of Feb. 20, 1874.....	56
Utah, Compiled Laws, 1876, page 232.....	56, 66
Utah, Compiled Laws, 1898, Section 353.....	70
Utah, Compiled Laws, 1907, Section 322.....	53, 54, 57, 61, 70, 71
Utah, Compiled Laws, 1907, Section 344.....	103
Utah, Compiled Laws, 1907, Section 353.....	71
Utah, Compiled Laws, 1907, Chapter 72, Sec- tions 3661, <i>et seq.</i>	72

IN THE
Supreme Court of the United States,
OCTOBER TERM, 1917.

No. 820.

PETER GEIDER, JOSEPH R. WALKER,
JOSEPH S. BAER, HENRY S. EVERETT,
MARGARET ANN MEEHAN, EUGENE
BLUM, ISAAC BLUM, EDWARD BLUM,
IRADOR BAAR, ALPHONSE DREYFOOS;
and ALPHONSE DREYFOOS, EUGENE
CLUM, DAVID C. GOLDENBERG and
EUGENE BASCHO, Co-partners doing
business under the firm name and
style of DREYFOOS, BLUM & Com-
pany; LEOPOLD FREUND and ALICE
FREY,

Appellants,

vs.

ANACONDA COPPER MINING COMPANY,
a Corporation; ALICE GOLD AND SIL-
VER MINING COMPANY, a Corporation,
and JOHN D. RYAN, J. W. ALLEN, W.
D. THORNTON, A. C. CARSON and E. S.
FERRY,

Appellees.

BRIEF FOR APPELLEES.

NOTE: At the time of the preparation of this brief, March, 1919, the brief for the appellants has not been received, although the appeal was taken in

November, 1917. This brief is prepared upon the assurance from counsel for appellants that their brief will be substantially the same as the one filed in the Circuit Court of Appeals.

Throughout this brief the defendants Anaconda Copper Mining Company and Alice Gold and Silver Mining Company will be referred to respectively as the Anaconda Company and Alice Company.

Statement.

In view of the contentions herein to be presented, it is necessary that a statement additional to that which will probably be made by the appellants should be made.

I.

Corporate proceedings of Alice Company touching sale of its properties to Anaconda Copper Mining Company and attempted dissolution of Alice Company.

Prior to the meeting of stockholders herein mentioned, the proper officers of the Anaconda Company and the Alice Company, pursuant to authority vested in them by the respective Boards of Directors of said companies, entered into a contract and agreement whereby, subject to the approval of the stockholders of the Alice Company, said Alice Company was to convey to the Anaconda Company, for a consideration of 30,000 shares of its capital stock and other incidental considerations, all the property of said Alice Company. Thereupon, by

order of the Board of Directors of the Alice Company, a stockholders' meeting of said Company was called and noticed, to be held at its principal office in Salt Lake City, Utah, on the 27th day of May, 1910, for the purpose of considering the proposition of confirming and ratifying said contract of sale. No complaint is made of the regularity of this meeting. Stock of the Alice Company aggregating 295,160 shares out of the total outstanding stock of 400,000 shares, was represented thereat, either in person or by proxy. Thereupon, the contract heretofore referred to was submitted to said meeting, and was duly ratified and confirmed by a vote of 289,500 shares for, and 5,510 shares against, those dissenting being among those represented as appellants in this case (Tr., Vol. I, pp. 317-341).

Being expressly authorized thereunto by the Board of Directors of the Alice Company, such authorization having been so ratified and confirmed by more than two-thirds of the outstanding capital stock of that Company on the first day of June following, said Company, by John D. Ryan, its President, duly executed a deed of conveyance of all its property to the Anaconda Company.

At the time of these transactions it was the intention of the Board of Directors of the Alice Company to dissolve the same and distribute its assets to the stockholders. Touching this point Mr. C. F. Kelley testified as follows:

"The plan from the inception of the general idea of consolidation was to sell the properties of the Alice Company to the Anaconda Company, and at or prior to this meeting a meeting of the stockholders of the Alice Company was called, in the event that the stockholders should ratify the sale by the directors, and the properties be conveyed, that there should be a

dissolution of the Alice Gold and Silver Mining Company—as a matter of fact, I think that prior to that time, the time of the Alice directorate meeting, we had represented to the New York Stock Exchange as a condition to the listing of the stock, that these subsidiary companies, whose holdings would consist of nothing but Anaconda stock, would be dissolved, in order to eliminate any objection that the Stock Exchange might have to double subsidiary companies, or holding companies within holding companies. *I know that was the purpose of the officers and directors of the Alice Company at and prior to the meeting calling this stockholders' meeting*" (Tr., Vol. II, pp. 853-854).

Pursuant to this general plan, the Directors of the Alice Company, by resolution, called a meeting of its stockholders for the 8th day of May, 1911, for the purpose of considering a proposition to dissolve said corporation and to wind up and terminate its existence, which meeting was duly noticed and was in all respects regular; 310,963 shares were represented thereat. By a vote of 297,088 shares to 13,388 shares, it was resolved that the Alice Company should take all necessary steps and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation, and to cause a proper distribution to be made to the stockholders entitled, of all of the assets and property of said corporation (Tr., Vol. I, pp. 347-365).

The Bill of Complaint discloses that one of the purposes of the suit is to enjoin such dissolution, so voted by the stockholders of the Company. The Bill of Complaint was filed on the 6th day of November, 1911, almost eighteen months after the stockholders had approved and ratified the sale.

II.

Relations existing between the Alice Company and Anaconda Company at time of the transfer.

At the time of the transaction complained of, the Anaconda Company exercised no controlling influence over the affairs of the Alice Company, further than the fact that John D. Ryan, was a director of the Alice Company and its President, and also a director of the Anaconda Company.

The Board of Directors of the Alice Company consisted of five members, none of whom, save Ryan, had any voice in the affairs of the Anaconda Company.

It is true that the Butte Coalition Company, a holding company organized for the purpose of holding the stock of the Red Metal Mining Company and such other stocks of mining companies as it might purchase, was the owner of a majority of the stock of the Alice Company. Said Butte Coalition Company had a capitalization of One Million shares of the par value of Fifteen Dollars per share. Neither the Anaconda nor Amalgamated Company exercised any right of control over either the Red Metal Mining Company or the Butte Coalition Company. These companies were entirely separate, independent and distinct from either Anaconda or Amalgamated. They were neither organized nor controlled, through directorates of stock ownership, by either of said Companies.

These properties were known as the Cole-Ryan Companies, the controlling spirit in which was one Thomas F. Cole and his associates; and neither the

said Cole nor his associates have ever had any voice in the management of either Anaconda or Amalgamated.

Out of the One Million shares of Butte Coalition, Anaconda owned none and Amalgamated only Fifty Thousand.

Mr. John G. Morony says:

"The organization of the Butte Coalition Company was absolutely separate and distinct from the Amalgamated Copper Company, and as a matter of fact, the Amalgamated Company had absolutely nothing to do with the Butte Coalition Company at the time of its organization, and as far as I know the Amalgamated Copper Company has had absolutely nothing to do with the Butte Coalition Company since its organization" (see Tr., Vol. I, p. 280).

Mr. John D. Ryan says:

"There was no one directly associated in the negotiations with Heinze who had any connection with the Amalgamated Copper Company but myself and attorneys who were acting for me. These negotiations were all with Mr. F. Augustus Heinze. I did not feel that I was representing the Amalgamated Copper Company in these negotiations. I had no authority from the Amalgamated Copper Company to proceed with the negotiations, and as a matter of fact was never acting for the Amalgamated or its interests except in so far as the dismissal of the litigation would prove to be to its interests, and I was trying to bring that about as a part of the trade" (see Tr., Vol. I, pp. 382-383).

The titles to the Heinze properties passed to Thomas F. Cole, and from Thomas F. Cole were transferred to the Red Metal Company. Ten and

one-half million dollars was paid in cash for the Heinze properties. There was not any difficulty in raising the money. The stock was largely oversubscribed. The transfer was made to Cole and from Cole to the Red Metal Mining Company, and then the Butte Coalition Company was organized and it became the holder of the stock of the Red Metal Mining Company (see Tr., Vol. I, pp. 382-384).

In 1905 Mr. Ryan obtained an option on a majority of the stock of the Alice Company, as a personal transaction of his own, and later, upon the organization of the Butte Coalition Company, this option was transferred to it and the stock acquired.

All other matters, save the fact that Mr. Ryan was a common director of the two Companies, and President of the Alice, are wholly unimportant as tending to show control of the Alice Company by either Anaconda or Amalgamated.

It is immaterial through what channel those who held the proxies to vote Alice stock at meeting of the Alice Company received instructions as to how to vote upon the question of sale of Alice properties. The proxies were sent out by the Secretary of the Alice Company. They were accompanied by a circular from the management advising each stockholder that in the opinion of the management the agreement of the company, entered into by authority of its Board of Directors with the Anaconda Company, ought to be ratified and was advantageous to Alice stockholders. In response to this circular letter, the stockholders voting for the confirmation of the trade signed the proxies authorizing the persons named to vote their stock at this meeting and returned them either directly to these persons or to the Secretary of the Company who

had transmitted the blank proxies and the circular letter. Under these circumstances this constituted a direction of the principals to their agents to vote the stock in favor of the proposition equally as much as though each stockholder had given a special direction to vote the stock in this manner. The result was that the persons named in the proxies, or their substitutes, voted this stock directly in accordance with the wishes of the stockholders, and no stockholder has ever disaffirmed the conduct of those who acted for him. In other words, the authority to vote the stock in favor of ratifying the sale of Alice properties to the Anaconda Company came directly from the stockholders themselves, and the particular channel through which this information was conveyed to those whose duty it became to vote the stock is entirely immaterial.

Mr. Ryan being a director of the Alice Company, was also its President. It does not appear that as President Mr. Ryan had, either under the by-laws of the Alice Company or the laws of the State of Utah, any extraordinary powers. As such it was his duty to execute the will of the Board of Directors as expressed in corporate action, such Board of Directors being the governing body of the corporation.

III.

Value of Alice property in the year of 1910, and character of the mineral contained therein.

That the market value of the Alice property in the year 1910, if indeed it had any market value whatever, was far below what was paid for it by

the Anaconda Company, and far below what any one, save the Anaconda Company, with its facilities for cheap development of the property, could or would have paid, is indisputable; and that the price paid by the Anaconda Company was fair, full and adequate, is apparent from a moment's attention to the history of the Alice, the condition of the Alice Company and the metallurgical possibilities of the property. This property appears to have been acquired about the year 1876, and the Company was incorporated in the year 1880. It contained silver ores, much of which carried large quantities of zinc. For some years it was operated profitably, yielding altogether dividends to its stockholders in the amount of \$1,075,000. As its development progressed the ores became much leaner in metal contents, and also much more difficult to treat, on account of the presence of refractory elements, increasing the cost of reducing and treating the same. Increased depths added to the cost of mining and handling, and coincident with the increase of the mining and reduction costs, and lessening of value, the price of silver, the one valuable constituent of the ore, decreased very rapidly, so that about the year 1893 profitable mining operations upon the property ceased, and the property which had been developed to a depth of fifteen hundred feet, and which contained over ten miles of underground workings (Tr., Vol. II, p. 979), was allowed to fill with water up to the seven or eight hundred foot level. Thereafter, a system of leasing was carried on at the property, resulting, after the year 1898, in a constant loss, from over \$20,320.80, the greatest, in the year 1902, to \$1,156 in the year 1911. During the same time the market value of its stock declined from approximately

Three Dollars a share during the early periods of its operations, to a merely nominal sum, and for a period of ten years preceding the acquisition of a majority of the capital stock by the Butte Coalition Company in 1906, the only recorded sale during that time was at the price of twelve and one-half cents per share.

In addition to showing a yearly loss, at the time of the sale to the Anaconda Company in 1910 the Company had an outstanding indebtedness of about Thirty-four Thousand Dollars, and had no funds whatever with which to meet the same. There were no ores in the mine of known value; although developed to a depth of fifteen hundred feet, and with ten miles of underground workings, these workings were caved and dilapidated; mill and hoist had burned; and except for bodies of zinc-bearing refractory ores of no known value, the entire asset of the Company was represented by this worked-out and dilapidated mining property.

No process was then or is now known by which the zinc ores, or any other ores, known to exist in the mine could be profitably mined and treated. Whether such a process would ever be found was and still is wholly problematical, for notwithstanding great progress in the treatment of zinc ores in the Butte Camp has been made in recent years, the Alice ores, being entirely different and quite more refractory than other zinc ores in the Butte Camp, have not yet been successfully subjected to treatment. To develop such a process, if indeed the same could be developed at all, would require enormous sums of money, such expenditures to be made subject to ultimate failure.

To open up the mine and equip it for prospecting and development work would have required an

expenditure in excess of Two Hundred Thousand Dollars; to work the mine and treat the ores would have required a much larger expenditure, the testimony showing that to build a mill of only five hundred tons capacity would cost approximately Five Hundred Thousand Dollars (see Tr., Vol. II, pp. 938-944).

There was no feasible method by which funds could be raised to further exploit and develop the property or discharge its indebtedness. The Company had nothing to offer upon which any reasonably prudent individual would have advanced these sums of money (see Tr., Vol. I, pp. 397-400).

The property had been thoroughly examined by skilled representatives of two of the largest zinc companies in the United States, the Empire Zinc Company and Beer-Sondheimer & Company, and after such examination the properties were offered to such companies on lease, but the zinc operators declined to have anything to do with them.

Judging from Appellants' statement of facts, touching value of Alice property, it would appear that the sole reliance of Appellants to sustain the conclusion of the Court, that the price paid for Alice of \$1,500,000 and assumption of Alice's debts, was inadequate, is that Alice ground contains copper of commercial value, and in an amount and so readily accessible that from its proceeds a purchaser could recoup a purchase price in excess of that amount and all expenditures for the recovery of the same.

The record discloses that such a contingency is, if anything, no more than a bare possibility, and wholly insufficient as a basis for an estimate of greater value of the property.

Alice is located in the silver zone of the Butte

District. Notwithstanding ten miles of underground workings, no commercial copper has ever been found therein, neither has any ever been found in reasonable proximity to this ground. If any copper is to be found therein it must be in certain veins, some of which tend towards the Alice ground, which, so far as explored outside of the limits of the same, bear copper ores only in pockets, and in their progress towards the Alice ground become either barren or change the character of the mineral contents from copper to silver or zinc.

The record is so barren of any evidence which would lead a reasonably prudent mining investor to entertain a well-founded hope that commercial copper exists in Alice ground that counsel are, and the Court must be, surprised at the contention of appellants.

Mr. Goodale, a metallurgist of repute, connected with the Anaconda Copper Mining Company or some of its subsidiaries since 1898, both in its smelting department and as Assistant Manager of the Company, and entirely familiar with the entire mining district of Butte, testified as follows:

"To my knowledge there has never been discovered a vein of copper of any kind or character in any of the Alice properties. I will say in that connection, that I looked at the report of Professor Blake to see if he mentioned occurrences of copper there in 1898, and he did not" (see Tr., Vol. I, p. 299).

Again:

"I spoke about Professor Blake's report on the copper district of Butte. He examined the Alice mine somewhere about 1885 and there is a paper he published on the silver mining in Butte. That, I think, was in 1887. Silver was the chief product of the Butte camp in 1885.

I am inclined to think that by that time copper was over-balancing the silver in value of product" (see Tr., Vol. I, p. 305).

Mr. Buzzo, Acting Superintendent of the Alice property from November, 1906, speaks of the Alice as containing a large body of lead and zinc ores (see Tr., Vol. I, p. 375). And in reply to a question as to copper in the vicinity of the Alice said:

"No, there is no ground near there that is worked for copper that I know of" (see Tr., Vol. I, p. 378).

Mr. Ryan said:

"The Alice properties are far to the northwest and outside of any territory that has ever produced copper in paying quantities" (see Tr., Vol. I, p. 392).

Again:

"The mine has been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operation" (see Tr., Vol. I, p. 398).

Mr. Corry, mining expert on behalf of appellants, to prove inadequacy of consideration for Alice properties, in speaking of these properties, said:

"Speaking from my own knowledge that is available to everybody these old claims were worked for their silver contents by the former operators, the Alice Company, and by lessees subsequent to that time. In other words, the

activity upon the Alice lode has been wholly confined to the mining of silver ores. They may carry a greater or less extent of gold—primarily for the silver contents" (see Tr., Vol. II, pp. 726-727).

Again:

"As to how extensively the Butte camp was prospected and worked for silver,—it was prospected over a greater portion of the entire district, and for several miles around, for silver, but the actual silver production,—producing properties, were confined more to this northern portion of the camp, and especially to the Alice on the Rainbow ledge, and in that vicinity and to the westerly of the ground shown upon this exhibit,—plaintiff's exhibit 1, Corry" (see Tr., Vol. II, pp. 731-732).

Again:

"I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu, where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated . . . I do not know distinctly of any east and west vein in this vicinity carrying copper minerals, except that it would be accidental: I cannot conceive of how such a thing could happen" (see Tr., Vol. II, pp. 748-749).

Mr. Wood, an expert upon whom Appellants apparently placed great reliance, in describing the Alice mine, said:

"I have known the Alice mine and the surrounding property since 1896. I should say, as to just what particular prominence

the Alice property has in the general geology of Butte,—it has the largest and best developed silver ledge or lode of any known in this district, and one of the largest probably in the United States; it is a lode that can be traced for a long distance,—I should say, roughly speaking, a mile, and the heart of the mineralization of that lode appears to be in the center of the Alice group; it is a very great lode, which has produced, as we all know, large sums of money in silver, and a lode which, at the time I visited it, was considered to be a probable source of zinc" (see Tr., Vol. II, p. 779).

Again, he said:

"I haven't any information that there are any profitable copper ore bodies in the Alice at present,—not any more than the zinc" (see Tr., Vol. II, p. 811).

The only competent evidence contained in the record tending to show any copper in the Alice ores is the testimony of Buxso, in which he said:

"There never were any ores left there simply because they contained copper that I know of. All the ore in the Alice contained a very small percentage of copper; about one-tenth to perhaps four-tenths of one per cent" (see Tr., Vol. II, p. 895).

Mr. Sales, Chief Geologist for the Anaconda Copper Mining Company, and more familiar with the entire Butte district than any other witness called to testify, touching this point said:

"Taking the Rainbow lode, from the presence of copper in that vein such as shown and the general geological characteristics of the lode or veins, I should consider it a possibility but a very remote probability of there being

commercial copper ore in the Rainbow Lode. I do not know of anything geological, or anything any other way that would indicate the probability of its containing copper at depth. I think the general tendency of the developments in that section up there is rather towards the opposite. I should be surprised to have commercial copper developed in any quantity" (see Tr., Vol. II, pp. 910-911).

Appellants seem to rely, as an element of great value, upon the possibility of certain northwest and southeast veins, known in the Butte District as the Blue Vein series, passing northerly and westerly into the Alice ground, and after passing within the surface boundaries of the same, bearing copper ores. It is practically conceded throughout the record by all the witnesses that, so far as known, the Rainbow Lode bears no copper ores. The contention of appellants that the Alice properties have a potential value on account of copper ores contained therein, was, however, practically disallowed by the Court, the Court stating in its opinion that such contention was of little consequence.

Chief among the veins mentioned by Appellants' witnesses, belonging to the Blue Vein series, are the Jessie and Edith May. No witness ventures the assertion that either of these veins passes through or into the Alice ground. All witnesses admit that these veins are pockety, and throughout long distances barren of mineral value. No witness ventures the assertion that even if passing through Alice ground there are any indications that any of such pockets of valuable copper ore would be found therein. It is uncontradicted that as these northwest and southeast veins pass northerly and westerly they become leaner in ore values, and instead

of continuing to bear copper ores, such ores as are found are of the silver and zinc variety.

All the knowledge now available in reference to these veins was available to the complainants in this cause when, in 1906, they optioned to John D. Ryan a majority of the stock of the Alice Company on a basis of Six Hundred Thousand Dollars, or thereabouts, for the entire Alice property, with the sole exception that in the Badger State claim the Edith May vein has, within recent years, upon vigorous development, produced more copper than it did theretofore.

Any development of copper ores in either of these veins can hardly be said, under the evidence, to be in close proximity to the Alice property, and even if this were true, in the absence of any substantial proof that said veins continue ore-bearing into the Alice ground, it would be of no consequence. Alice lies within the silver district. The copper district of Butte is also well-defined. Every ore-bearing zone has its limitations. If close proximity were, after forty years of vigorous development in a mining camp, any substantial evidence of contiguous values, then the history of mining ventures should be rewritten.

Mr. Corry, expert on values for Appellants, did not think sufficiently of the possibility of any of the Blue Vein series extending into the Alice property, and bearing therein commercial copper ores, to consider such possibility as a basis for his arbitrary estimate of the value of the Alice property at Three Million Dollars.

Mr. Goodale says:

"I do not know of any extension northerly in the Jessie vein and in the Badger State. * * *

The Alice properties lie northerly and north-westerly of the Badger State" (see Tr., Vol. I, p. 299).

Again, he says:

"I do not know of any copper ore in the Badger State in any vein which in my opinion extends into the Alice ground" (see Tr., Vol. I, p. 300).

Mr. Ryan says:

"The Badger State claim I should say would be about one thousand feet from the Alice properties, but the Badger State workings more than that, probably two thousand feet from the Alice properties. There was an entirely different character of ore there. The ores opened in the Badger State are not zinc ores; they are copper ores with some little zinc, but copper ores running high in silver. The Lexington properties adjoining the Alice properties on the south have been worked extensively by the La France Company or one of Heinze's companies within the last four or five years. That lies between the Alice properties, and the copper-producing properties on the western end of the Camp" (see Tr., Vol. I, p. 421).

Mr. Ryan then describes the history of the Lexington properties, the attempt of Heinze and his companies to operate the same and expenditure of money thereon, and the utter failure of the Lexington to pay a profit to its operators, and the purchase of the same for the sum of Two Hundred and Fifty Thousand Dollars (see Tr., Vol. I, pp. 421-422).

The Poser mine and the Pilot Butte, mentioned in the testimony, had not made any developments that would give the Alice property any value up

to the time that the Alice property was sold to the Anaconda Company (Ryan, Tr., Vol. I, p. 399).

In speaking of the Edith May and Jessie Veins, Mr. Corry, expert mining engineer on behalf of Appellants, also said:

"As a mining engineer, I would say as to these veins, continuing until the encountering of the Rainbow lode itself, that between this point last referred to and the southern limits of the Alice property, there are a series of holes which bring this line of outcrop to within possibly 100 feet of the southern boundaries of the Alice group, and I would say that they would at least continue to the intersection with the Alice lode, and if possible would continue a distance into the Rainbow lode" (see Tr., Vol. II, p. 730).

After having given an estimate of the market value of the Alice property at the sum of Three Million Dollars, the witness said:

"All that I know about the Alice is what I got from the surface examination and surface study. I have not been underground in the Alice to any depth. I have been down 30 or 40 feet" (see Tr., Vol. II, pp. 736-737).

Again:

"The entire surface has been done over, back and forth, and has been quite thoroughly prospected. In placing my value on the property, I did not consider whether or not there still was great deposit of a silicious silver ore, a low grade which was too low grade at that time, but which could very likely be treated by a percolating or cyaniding process. I did not consider that that was a feature of it, although, of course, it occurs to me, but *I base my valuation of that property as it appealed to me upon its location*,—I considered that the Alice was

not thoroughly depleted to the 1,500 foot level on the veins there. I considered that the fact of obtaining anything above the 1,500 foot level from which I believe there exists some possibilities, would simply add to its worth. *I did not give any value at all to ore bodies that are known above the 1,500 foot level*" (see Tr., Vol. II, p. 740).

Again:

"It is my belief that there are great possibilities as to the treatment of what may have been too low grade silver ores for them to treat at that time. I do not know today of any ores above the 1,500 foot level in the Alice properties that I could say I could treat profitably at this time by any process" (see Tr., Vol. II, p. 741).

Again:

"I do not know of any place in the Rainbow ledge or lode, outside of in the Elm Orlu where copper ores of a commercial character have been found. What copper they found in the Elm Orlu was in the cross vein, a southeasterly and northwesterly vein; a vein entirely independent and of a different age and system than the Rainbow system of leads, but in close proximity to the Rainbow lode, as I stated" (see Tr., Vol. II, p. 748).

Again:

"I do not despair of finding copper ore in the Rainbow lode itself. The Rainbow lode has been developed from the Rising Star on the west on through the Alice ground to the Elm Orlu, and I carry it to the Black Rock, and the Alice is 1,500 feet and the Moulten 1,500 and I know of no place where copper ore has been found in the vein itself. *Somebody has to finally find something in that vein, and I do not consider that sufficiently deep development*

has been done in that vicinity to tell the last story. This then is classed not as copper bearing but as a silver vein. It has a different geological formation than the copper veins of Butte" (see Tr., Vol. II, pp. 749-750).

The witness then states that the country adjacent to the Alice has been pretty well developed underground, and describes the work on the Pilot, the Currie and the Blue Wing, and declares that he does not know of any place, either in the Alice ground or outside of it, that copper ore has been found in any of the veins referred to therein; neither in the Currie nor the Blue Wing nor the Chief Joseph nor the Lexington. The location of these different properties will be understood by reference to the maps introduced in this cause (see Tr., Vol. II, p. 750).

Speaking of the northwest and southeast veins collectively, including the Edith May and Jessie veins, the witness said:

"The fact as to whether or not some other vein is pointing towards the Alice ground, and is an ore producing vein or a parallel vein, or a spur that never produced, would certainly be a factor in determining its value, *but my approximation was placed only incidentally upon the possibility of these northwest veins going up.* On my exhibit 2 Corry, I carried that Jessie vein right on through the Rainbow series, and show it a considerable distance to the north, the scale of that map being approximately 400 feet to the inch; and carry it about 1,250 feet northerly of the Rainbow lode series. I believe that these northwest veins do, *or will be found,* to go through the Rainbow ledge, with an individuality beyond. *I have never seen this vein doing that.* I cannot say

where there are any workings north that would justify the 1,500 foot projection of the Rainbow lode series" (see Tr., Vol. II, pp. 753-754).

Again:

"All these northwest-southeast veins carry their ore in shoots,—are pocketed, as the miners call it. They do not have the regular ore bodies that the old east and west, the Anaconda system, has. The mineralization is more concentrated; and *you find these barren places in the veins for long distances both on the dip and strike generally.* When you get away from where you find your shoot, it is simply a question of possibility of finding another; there being nothing there to indicate whether the shoot is there or not. * * * I do not know of any copper ore of my own knowledge that has been mined from the Jessie vein" (see Tr., Vol. II, pp. 753-754).

Again:

"I sketched a projection of the Edith May north to show the turn there of both the Jesse and Edith May, *and as to whether or not the veins that I do pick up in close proximity to the Alice are absolutely, as stated, or not, I could not say,* but the mere fact exists that at those points are veins having their general strike and of considerable prominence" (see Tr., Vol. II, p. 756).

Again:

"I have heard it uncontradictedly stated that the Badger State gets its ore from an old east and west vein called the Badger State vein. Directly speaking it is not an east and west vein, it is north 76 west, passing through the Badger discovery. *I do not know its course as to whether it would go through the Alice ground at all. I have never studied that out on the surface*" (see Tr., Vol. II, p. 756).

In reference to the history of the Butte Camp, as to copper being obtained at depth, the witness said :

"Generally speaking the history of the Butte veins is that they carry silver on the surface, and you got copper at depth,—I mean the copper veins. I do not mean the Rainbow lode, the Black Chief lode, or the Nettie, or the Emma. I do not mean the true silver veins, they carry silver from the surface, and do not carry copper so far as they have been developed" (see Tr., Vol. II, p. 757).

According to this witness, the nearest ore-bearing copper in commercial quantities is 3,200 feet from the Alice ground. On page 769 of Vol. II of the Transcript he says :

"I should say it is about 1800 feet from the Badger State shaft to the point nearest eastward that I know is profitably worked. It is about 1200 or 1400 feet westward from the Badger State shaft to the Alice ground."

Beginning on page 757 of Vol. II of the Transcript, the witness Corry states how he arrives at his estimate of the value of the Alice property. Therein it is disclosed that he did so with no knowledge of underground workings in the property, 10 miles in extent, with no knowledge of the character of the ore disclosed in these workings, with absolute knowledge that no known process had been discovered for treating these ores, with no knowledge that any copper-bearing veins pass through the property, and with no knowledge of the property whatever except a surface examination. This story makes most interesting and entertaining reading, but leads the mind irresistibly to the conclusion that the value placed upon the property of Three Million Dollars by the witness is alto-

gether speculative; that it is based upon nothing worthy of consideration by the court; that it is a simple fancy of an idle dreamer, justified only by a fevered imagination or an elastic conscience; and that the estimate of any other amount, however large and fanciful, would have been of equal weight; in short that the arbitrary estimate given by the witness is worthy of no consideration whatever in view of the premises adopted by the witness in arriving at his conclusions.

Witness Weed, a mining engineer greatly relied upon by the Appellants, also gave an estimate of the Alice ground as being of the reasonable market value of Three Million Dollars. This estimate of the witness is admitted by him to be purely arbitrary. Indeed, he asserts that under the conditions existing in the Alice property every estimated value must be arbitrary. Therein he disagrees with the learned District Judge, who, in his opinion, held that an arbitrary price is *prima facie* inadequate.

The estimate of this witness must be absolutely discarded by the Court, for the reason that the basis of the same was largely matters of which the witness had no personal knowledge, purely hearsay and incompetent, all of which were duly objected to in the court below, the objections thereto being overruled.

This fact vitiates and renders wholly incompetent the estimates of value which seemed to be so persuasive with the District Court, and requires this Court to disregard the same.

The witness was allowed to testify, against objection, as to general information which he had obtained and statements which are contained in the reports of the North Butte Mining Company, in relation to the large production of copper from

the Edith May and Jesse veins (see Tr., Vol. II, p. 782). And also in regard to the position of the Edith May vein on the surface (see Tr., Vol. II, pp. 782-783).

In reference to the underground workings of the Alice and Moulten properties, the witness was allowed to, and did, rely, against the objection of the defendants, upon certain maps which he extracted from the official report of the Alice Company for the year 1884, and also on reports given by the different superintendents to the presidents, and reports issued by the presidents, and based his judgment upon this, and he says that he based his judgment as to the value of the property, so far as that factor went, upon this evidence (see Tr., Vol. II, pp. 784-785).

It needs no argument to convince the court that maps made in the year 1884 for the use of the Alice Company, extracted by this witness from the files of the Company, and reports of its superintendents made to the presidents of the company, are hearsay, self-serving declarations and wholly incompetent as against the Anaconda Copper Mining Company in this suit, and wholly incompetent as a basis for the judgment of this witness in reference to the value of this property.

The witness, against the objection of the appellees, was also allowed to testify as to certain conversations which he had with a man by the name of Sherwood, touching the success which the said Sherwood had had in connection with the treatment of the zinc ores belonging to the Butte & Superior Copper Company. (These ores are shown by all of the testimony to be of a different character altogether from the zinc ores of the Alice.) (Tr., Vol. II, pp. 788-789).

The witness, conceding that he was not a metallurgist, but only a mining engineer, that he could not speak as an expert in metallurgy, was allowed to give his opinion that the zinc ores of the Alice property could be successfully worked by existing processes. In determining whether or not this could be done, the witness was allowed to use information which he said he obtained from one Walker, as to the results of certain tests on a shipment of ore which Walker declared he had caused Buzzo to ship to Salt Lake City in the year 1902, which the witness stated he verified as far as possible by the shipping returns and the assay receipt, that is, checking each step in the process by the papers submitted. All this against the objection of the appellees that the same was hearsay and altogether incompetent (Tr., Vol. II, pp. 789-790).

The witness was also allowed to state from these unidentified papers or contents of the same, in so far as it related to the copper contents in the ores in the Alice mine, namely, that the sample about which witness was testifying, and about which he had no personal knowledge, had 1.4 per cent. of copper, and that the old records showed an average of better than 1.1 per cent. copper; and having so stated the witness used this as a basis for the conclusion that copper ore might be found in the Rainbow Lode, but the witness did not state that there was any probability of copper ore being found in that part of the Rainbow Lode included within the Alice group (see Tr., Vol. II, pp. 790-791).

The witness, in connection with his conclusions of value of the Alice property, was allowed to base such estimate upon hearsay and incompetent evidence of the presence and value of zinc-silver ores,

although personally he had no knowledge of the existence or value of such ores.

Both this witness and also Corry, were allowed to use Exhibits V, W, X, Y and Z, pages 450-459, Buzzo's letters to Walker, as a basis for these estimates. These letters were clearly hearsay, self-serving and incompetent as against the defendants, and were duly objected to.

Having thus fortified himself by these hearsay statements, and treating the same as evidence in the cause, and as a basis for his estimate of the value of this ground, and having added thereto another hearsay element, namely, the values placed on adjoining and less desirable claims, of which there was no testimony then or thereafter produced in the case, the witness stated specifically that the value of this property was three million dollars. On page 791, Vol. II of the Transcript, he said:

"From my study of the ground, I would say that the value of that property in the early part of May, 1910, giving consideration to the values placed on the adjoining and less desirable claims, and to the other factors, which I have mentioned, I would state specifically, three million dollars."

This estimate, for the reasons hereinbefore given, becomes utterly incompetent, is wholly valueless to the Court, and should be discarded.

A further inspection of the testimony of Weed, commencing with page 801, Vol. II of the Transcript, shows further references to the hearsay and incompetent testimony touching the shipment of ores from the Alice mines heretofore referred to. Among other things, after giving the pretended metal contents of such ores, he says:

"I have been going on the assumption that the zinc ores would carry 1.1 say, per cent of

copper, which would be over twenty pounds to the ton. That would be an important factor in my conclusion as to the value of the ores in the Alice mine."

Let it be noted that no competent proof was ever introduced which would authorize Mr. Weed to use the results of that shipment as a basis for an estimate of value, or authorize the court in calling the same to its assistance in arriving at a conclusion upon this important point.

The papers purporting to show returns of metal values in this shipment of ore were, against the objection of the Appellees that the same were wholly hearsay and incompetent, introduced in evidence (see testimony of Walker, pp. 835-844, Vol. II of Transcript). This evidence was entirely secondary: they were returns that smelting and sampling works had made to Walker. No effort was made to introduce any proof touching the correctness of these returns, or whether they truly represented the value of these ores. Moreover, had such proof been introduced, the evidence was clearly incompetent and of no probative force, for the reason that there was not a particle of evidence that this lot of ore represented the average of the ores disclosed in the Alice workings or a correct or true sample thereof, and from aught that appears in the record, this may have been a picked shipment, taken from a particular place in these workings, and may have been all of this character of ore to be found there. Indeed, it does not even appear by any competent proof, of any nature whatsoever, that this shipment of ore came from the Alice properties.

Upon this incompetent evidence, coupled with Mr. Weed's conclusion (also wholly incompetent

because he denied, Tr., Vol. II, page 803, that he was a metallurgist or permitted himself to be so considered) that such ores could be under known methods treated successfully, Mr. Weed, when pressed for the elements of value aggregating Three Million Dollars, said that he considered the ores disclosed in the Alice workings to be of the value of One Million Dollars, and this was the only specific element of value which he would estimate in dollars and cents. As Corry, so Weed. His reasons for arriving at a Three Million Dollar valuation are so fanciful, contradictory and equivocal, that it is inconceivable that the court should allow such estimate, a predominating influence touching a finding upon this point.

When brought to bay, the witness said:

"As to the speculative nature of my elements of value, when it comes to pinning them down to actual dollars and cents, I cannot say that this element has so much, and that element so much; if I would fix the whole at so much, upon anything definite in dollars and cents,—it affects the values of the claims basing it roughly at say one hundred or two hundred thousand dollars a claim, that would give me a rough estimate; adding the value of the shaft if it were in good condition would be another element, and the large bodies of zinc ores another; so we have the various elements without placing any specific value on any one. As I recall it, the Alice has about twenty-two claims, and some of those fractions have a strategic value which gives them value far in excess of the mere acreage. You have less than three full claims on the Rainbow Lode, and the others are of less importance; for instance, I understand the Little Maggie which was a good vein and profitable to the 700, but any valuation is *always arbitrary*" (see Tr., Vol. II, p. 821).

In this connection, and as apropos to any probable value which the Blue Vein Series, known to be copper-bearing, would give to the Alice property, even though it had been established that any of them known to bear copper values passed into the Alice ground, the following statement of Witness Weed is significant:

"It is true that the Jesse vein and the Edith May vein, as they go to the northwest there, their mineralization is changing and becoming more like the silver mineralization—the contents" (see Tr., Vol. II, p. 814).

Mr. Kelly testified:

"On the other hand, the properties of the Alice Company were rather remotely situated, northwesterly from the copper district, or outside of what was known at that time, or in fact still is known, as the boundaries of the copper district" (see Tr., Vol. II, p. 853).

Mr. Gillie says:

"Many of these northwest and southeast veins (Blue Vein Series) are simply fault fissures that so far as disclosures have been made, contain no commercial ores of any account. Others have produced commercial ores from pockets or shoots found occasionally in the vein" (see Tr., Vol. II, p. 883).

Referring to the Edith May vein in the Badger State, Mr. Sales says:

"As to the condition of the Edith May vein in its developments from the Badger State shaft, and particularly westerly from the section of the Badger State shaft as to giving favorable promise of occurrences to the west, the unfavorable condition is that the ore shoots themselves are beginning to fail in copper

While you find the ore shoots there, the ore is the same as in the other veins. Instead of being a copper ore, it is going to be an ore made up of zinc, quartz and iron. The copper is failing going to the west. I mean the mineralization. No, they are not commercial. I don't know just what would be the best term. You could call it a mineral shoot or a shoot of mineral deposited in the vein. I have made a general observation on all of these veins, that as you go outward from the main copper area you get into veins which are more zincy; that is, there is a transition from one end to the other. Starting in the Alice country, both the northwest veins or the blue vein system and the old Anaconda copper systems consist of the silver vein minerals, manganese, quartz and iron. That is practically all, and then when you get into that district it does not make any difference whether you are mining a northwest vein or east and west, the mineralogical character is very similar" (see Tr., Vol. II, p. 918).

Again he says:

"I do not know of any vein that points on its strike to the Alice ground from the east or southeast or the general easterly direction or that side that gives promise or looks favorable to the finding of ore beneath the Alice surface. I do not know of anything coming in from the other side, the Silver claim side, that would have any particular bearing on the Alice. They are simply veins which are regarded as silver veins, the same as all that country up there. I don't know anything of any particular importance. Outside of the low grade zinc ores that have been referred to repeatedly I know of nothing in the Alice ground or any of it that would give it any tangible value, that you could give it as a mining engineer, except a remote probability or possibility of copper. It really hasn't any

great importance. I could not as an engineer place a value on it. It is purely speculative; very much so" (see Tr., Vol. II, pp. 920-921).

Referring to the Blue Vein series, including the Edith May, Jesse and other veins of that character mentioned in the testimony, Mr. Gillie says:

"Taking the veins that point towards or from any of the Alice ground, I would say they are very unfavorable going westerly towards the Alice ground, of finding ore in the Alice ground. There is nothing on any of them that would indicate to me the probability of their carrying ore in the Alice ground, except that there are productive veins in the country that continue on. There is a possibility but not a probability. I could not, as an engineer, place any value on the Alice ground because of that condition, because those veins are pointing in that direction, having in mind the developments which are upon the veins" (see Tr., Vol. II, p. 935).

All the testimony in the record, save and except the incompetent testimony of the witness Weed, heretofore referred to, shows conclusively that the silver-zinc ores disclosed in Alice ground were, at the time of the sale, and continued to be up to the time of the trial, of no commercial value whatever. They are of an entirely different character from the zinc ores of the Butte & Superior, Elm Orlu, and other zinc ores in the Butte District which, after many years of experimentation, are being successfully worked by those companies, and so refractory in character that notwithstanding the marvelous progress made in the art of metallurgy there is no known process by means of which they can be made so.

Subsequent to purchase by the Anaconda Com-

pany, two of the greatest zinc producing firms in the world thoroughly sampled and experimented with these ores, with a view to determining their utility and obtaining leases upon the property, without success. The Montana Zinc Company at one time erected a plant of considerable magnitude and carried on an intelligent effort to successfully treat the Alice ores, but the result was a failure (see Tr., Vol. II, p. 939, Gillie; Ryan, Vol. I, pp. 419, 420, 429).

The defendants caused the ores in the Alice to be thoroughly sampled, assayed and treated in order to determine their value, and the possibility of successfully reducing them (see Tr., Vol. II, pp. 888-900, Buzzo; Febles, 903-908). These samples were turned over to James L. Bruce, a metallurgist of high repute, who, after many years of experiments upon the Butte & Superior zinc ores, had attained a satisfactory method for their treatment, and the result of his tests, together with his conclusions as to the commercial value of the ores in the Alice Mine, is found in the Transcript, Vol. II, pages 864-877. Speaking of his tests, he says:

"Those tests were necessary in order to determine whether the ores of the Alice could be treated profitably by any known processes. I found it was a very difficult ore to treat under any known process, for three reasons or four; a great deal of the mineral concentrates into the fines in crushing, wherein it is more difficult to separate the different minerals, in fact practically impossible to separate the iron into the zinc to any marked degree; I found also that the silver did not concentrate into the lead concentrates, but that the lead concentrates ran practically the same as the crude ore; I found that a large part of the mineral was finely crystalline, so that it could not be filtered with-

out fine crushing, and I think I have covered the principal difficulties in connection with the concentrating. I found in reducing those ores, that practically all of the silver values go into the zinc concentrates, not all, but a very large portion of them. On the ore that was treated, the ore would have no value either in the zinc ore or concentrates on any new process (see Tr., Vol. II, pp. 865-866). * * * My opinion is very distinct that the ore of the character of which Mr. Febles gave me cannot be treated at the present time by any known process or known method. There would be considerable margin between the cost of handling it and what you would realize from it at the present time (see Tr., Vol. II, pp. 867-868). * * * From the appearance of the Alice ore and my experience in handling it, I would say it is quite dissimilar to the Butte & Superior ore. There is a great deal more lead in it, and a great deal more iron. It has iron pyrite. In the Alice ores, judging from the samples I had, the silver does not concentrate into the lead concentrates. In fact, rather the reverse, while in the Butte & Superior ores, the concentration of silver into the lead concentrates is quite marked, the silver in the lead concentrates being of value, and in the case of the sample from the Alice there is no value in the zinc concentrates, while in the Butte & Superior ores, the silver, such as can be thrown into the lead concentrates, is of considerably more value than the same amount of zinc concentrates would be (see Tr., Vol. II, pp. 868-869). * * * I regard the zinc ores in the Alice mine as altogether speculative in value. I consider that they may have some future value (see Tr., Vol. II, p. 874). * * * I do not know of any process now that is even close to perfection to treat those ores, that would make them commercial. I cannot conceive of any tonnage being mined there that would be profitable, figuring them upon the

basis of treatment of a tonnage of 500 tons a day or even a thousand tons a day" (see Tr., Vol. II, pp. 875-876).

Quite significant, as touching the value of this property, is the fact that in the year 1905 or 1906 the Walkers of Salt Lake City, who had the largest interest in the property since the year 1880, and were men of very great wealth, together with others, optioned a majority of the stock of the Alice on the basis of \$1.50 per share, or of \$600,000.00, for the property, and this stock was finally acquired upon that basis by the Butte Coalition Company. Intermediate this date and the sale of the property to the Anaconda Company, nothing of consequence had been developed, either in the way of the treatment of the Alice ores or in the development of the ground, which would add to its known value. It is true that the Badger State mine had produced more abundantly of copper ores than it had theretofore, but this is of no consequence in light of the testimony in the case and it is also worthy of comment in this connection that the thirty thousand shares of Anaconda stock, during the four years from the date of the sale to the date of the trial of this suit, yielded more income to the Alice stockholders than was ever yielded by the Alice properties, save and except alone the year of 1880. As to this point Mr. Gillie says:

"As to the history of the dividends of the Alice Company, the larger portion of that was paid in the first fourteen years, 1880 to 1894, although some dividends were paid in '98, the total dividends amounting to one million and seventy-five thousand dollars. For the years 1910, '11, '12 and '13, the Anaconda Company has paid about forty millions of dollars, nearly equivalent to ten dollars a share on the thirty

thousand shares of Anaconda the Alice Company owns, \$300,000.00. There was forty millions paid in that period, and had the Alice accepted this proposition, they would have been doing better in four years than they did in any other period of its history, even in 1880, so far as returns are concerned" (Tr., Vol. II, p. 936).

More significant is the fact that late in 1915, under most favorable auspices, at public auction, no bidder could be found for the property at a price exceeding the consideration paid by the Anaconda Company.

IV.

The corporate business of Alice had become unprofitable and could not be carried on by the corporation; there were insufficient funds to continue the business and no money with which to pay existing indebtedness. The corporation was in failing circumstances and, in so far as its financial condition affected its business prospects, was in fact insolvent.

The facts touching the history, business failure, financial condition and inability of Alice to carry out the purposes for which it was organized are quite fully disclosed in subdivision III next preceding, to which the court's attention is particularly invited, insofar as it affects the question here

involved. To repeat them under this subdivision is unnecessary.

In addition thereto, the Court's attention is invited to the testimony of Mr. Ryan (Tr., Vol. I, 397-398), in which he said:

"There had been no operations on the Alice properties, excepting leases, since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taking care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there had never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations."

And Transcript, Vol. I., page 400, where he also said:

"The Alice Company was without means, was in debt, had nothing in its plan of organization that permitted raising the money except to mortgage the property and attempt to sell bonds, and I had never considered that

we had anything upon which we could base representations of the value of the property that would warrant anybody in loaning us a large amount of money."

V.

The evidence fails to disclose any violation of the Sherman Anti-Trust Law in connection with the acquisition of the Alice properties, or otherwise, but expressly and affirmatively shows to the contrary.

The Amalgamated Copper Company was organized in the year 1899, for the purpose of acquiring the stocks of certain mining companies operating in the Butte District. Pursuant to its organization, it immediately acquired a majority of the stocks of certain of these companies. Its original capitalization was Seventy-five million dollars; subsequently, this capitalization was increased to One Hundred and Fifty Million Dollars, and a few years after its organization it acquired a majority of the capital stock of certain others of the mining companies in that district.

There is not a scintilla of evidence in the entire record showing that at the time of its inception, or at any time thereafter, it was organized for any evil purpose whatsoever, except the statement of one Thomas W. Lawson touching certain conversations he claimed to have had with Henry H. Rogers prior to the organization of the Company,

which will be noticed further in the argument hereto appended.

The conduct of the Amalgamated Copper Company, as a purely business venture, from the date of its inception to the date of this trial, appears from the record to have been entirely unobjectionable.

Among the companies controlled by the Amalgamated Copper Company was the Anaconda Copper Mining Company, a corporation organized and existing long prior to the formation of the Amalgamated Copper Company. Amalgamated owned a majority of this stock. Anaconda was the largest operating company among the companies controlled by Amalgamated.

Early in the year 1910 it was decided that the physical properties of the different companies controlled through stock ownership by Amalgamated should be consolidated. Reasons essential to the very life of these mining companies and to their continued production of copper ores impelled, if in fact they did not compel, this union of physical properties. These reasons are so pointedly stated by Mr. Kelley, on pages 311-313 of Vol. I of the Transcript, that we feel justified in quoting therefrom somewhat at length:

"I will say that the causes which led up to and resulted in the consolidation were, I think, three primarily. The first was due to the fact that a part of the mining companies operating in Butte had reached the point *where they could no longer produce their ores at a profit*; that condition was the result of a necessity of operating separate, independent organizations, running separate plants and hoists, maintaining separate equipment, and making their own individual development to the various ore bodies, owned by these different companies.

The result was that the overhead charges were eating up a large part of the profits, and, as I say, with some of the companies it was rather a close proposition, and a close proposition so far as certain territory was concerned. It would be to the best interests of all if a plan of organization could be perfected by which the mining ground that was contiguous to one company or another as the case might be, might be worked without the necessity of each company making its separate individual development. In other words, it seemed like a waste and an unwise expenditure of money to require one concern to equip a surface plant to maintain it separately, to run up to a line and stop at the end of its property, at the end line of its property, whereas its development, its shaft, its crosscuts, its laterals and its surface equipment, were completely adequate to enable that company to proceed and take out the ore and to require another company operating the property contiguously to have its separate plant, and its separate development, and run up, say, to the other side and stop, at its line. Now, that was one cause. The second cause, or the reason that led to this consolidation, was the increasing number of underground mining conflicts that could not be equitably and legally adjusted as between those different companies without the expenditure of an enormous amount of money, from which no good could come. In explanation of that I want to say that in certain districts in Butte, the prospecting development had shown a large number of veins that were not profitable or productive near the surface. Now in order to determine absolutely the ownership of those veins, it would be necessary for the different corporations, owning them separately, to have developed the apex by raising through an absolutely unprofitable portion of the vein to reach the apex, and then opening up the apex, and disclosing it with reference to the exterior bound-

aries of the different mining companies or claims owned by the different companies. All of that work would have been dead work; it would have cost a large amount of money and as I say, would not have been productive so far as anybody realizing from the actual doing of the work. The third reason that led to the consolidation, was the desire to so consolidate these properties that the very heavy burden, the exploration and development might be carried on for the joint benefit of all of the different companies. For instance, these properties lay—I am not speaking, with reference to the Alice properties, because that was an after thought, I think it had no part in the original consolidation—but often times property lay contiguous, the property of one company was contiguous to the property of another company. Now, it cost a great deal of money to prospect and develop and open up these mining claims, and there was not any fair or equitable way in which that charge could be distributed among the different companies. If the Anaconda Company, for instance, had begun an extensive exploration, and found a vein, although it might have been profitable for the Butte & Boston Company, there was no way of dividing the expense, and it was the different complexities that came about in the operation of these different mining companies as separate units that led to the consolidation of the physical properties. I think that is a fair statement of it."

Again, on page 314, Vol. I of the Transcript, Mr. Kelley says:

"If twenty different companies operated at Butte, independently the expense would be immeasurably greater than if one company operated all of them, and a good many of them could not be operated at all."

And again, on page 315:

"The economies in operation have necessarily been great in order that operations may be carried on at all."

Shortly after the consolidation and purchase of the physical properties of these companies by the Anaconda Copper Mining Company, the Anaconda Company also acquired certain properties belonging to W. A. Clark, known as the Clark properties, and also acquired the Alice properties—the acquisition of the Alice property was, as stated in the foregoing by Mr. Kelley, an after thought. The continued acquisition of mining properties by the Anaconda Company was absolutely essential in order to continue its life. It was carrying on its mining operations at a rate of from ten thousand to fourteen thousand tons a day. Necessarily, the result was depleted ore reserves. Notwithstanding its acquisition of mining properties, in the year 1910 the ore reserves of the properties controlled through Amalgamated were not as great as they were in 1899. On page 942 of Vol. II of the Transcript, Mr. Gillie says:

"Every mine had an end, and in order to prolong the life of a mining company it is necessary to acquire additional property. That would be the first thing. Since 1899 the Amalgamated Copper Company (Anaconda) has been mining ore at the rate of about eight to ten thousand tons a day, and for the last seven or eight years we have been mining at the rate of thirteen to fourteen thousand tons a day. As to the comparison between the depletion and the acquisition of ore deposits since 1899, in the amount of copper they would control, well, no, they haven't added as much in the way of ore reserves as they have exhausted

during that period. * * * I am afraid the Amalgamated has not kept pace with its production. It has exhausted its resources so far as its metals produced are concerned."

The United Metals Selling Company was incorporated about 1899. At that time it took over the business of Lewisohn Bros. as a going business, it engaged in the selling and distribution, in the markets of the world, of the copper production of such of the Butte companies as were controlled by Amalgamated, as well as other of the Butte companies, and also of copper produced elsewhere in the United States.

The stock of this Company was acquired by Amalgamated in 1911. It was a legitimate business enterprise, and it was only through it, or some like company, that the copper production could profitably be disposed of. The necessity for the distribution of copper in this manner is made apparent by the testimony and the character of its operations as touching producer and consumer, its selling of copper being actually from the producer to the purchaser, is disclosed by Mr. Ryan, pages 408-10, Vol. I of the Transcript, and by Mr. Evans, page 282, Vol. I of the Transcript. Touching the necessity for organization of this character, Mr. Evans said:

"The reason for a metal selling agency is that it is almost necessary to have a large amount of copper at your disposal, have it at different places in the world, have it marketable and ready for delivery. The metals selling agency sells at the point of delivery. I would say that it is necessary to have an organization that can be kept in constant touch with the conditions that affect the price of copper all over the world. It would be im-

practical and very difficult for independent or separate producers to maintain such agencies."

Neither the Amalgamated Copper Company, nor the Anaconda Copper Mining Company, nor the United Metals Selling Company ever controlled either the sale or the production of a major portion of the copper production of the United States alone, and the proportion of the world's production controlled by them, or either of them, was relatively small. Neither did the entire Butte district, in the year 1899, or at any time thereafter, produce a major portion of the copper produced in the United States, and the relative proportion between the copper produced in the Butte Camp and the production in the United States, as well as in the world at large has, since that date, constantly decreased.

From the record, it does not clearly appear what part of the copper production of the United States, or of the world, was controlled by the Amalgamated, through stock ownership, about the time it came into existence, and after it acquired the control of the Boston & Montana and Butte & Boston Companies. From a mass of statements by counsel, and incompetent testimony, it would appear that probably about thirty-five per cent. of the copper of the United States, and about one-fifth of the copper of the world, was produced by these stock-controlled companies (see Tr., Vol. I, p. 290; Vol. II, pp. 713-714). This is, however, not very material, for it does appear from other more or less competent testimony, but the only testimony which Appellants deemed it essential to introduce, that in the year 1910 the copper production of the United States amounted to 1,086,151,430 pounds; that the

total copper production of Montana was 288,449,425 pounds. From the Montana production there must be deducted, as produced by independent producers, at least 52,000,000 pounds (see Tr., Vol. I, pp. 291-292), leaving the production of the Anaconda Copper Mining Company, after it had taken over the physical properties belonging to Clark, the Red Metal Company, the Butte Coalition, and all the physical properties of the companies which had theretofore been controlled by Amalgamated, through stock ownership, at the amount of 232,449,420 pounds, being only twenty-one and one-half per cent. of the production in the United States, and a much smaller per cent. of the world's production; and it is worthy of note that ever since the inception of the Amalgamated Company; the proportion of copper produced by the companies controlled by it, through stock ownership or otherwise, to the production in the United States, and in the world, had been, up to 1910, and ever since has been, constantly decreasing.

In 1910, the United Metals Selling Company handled from one-fourth to one-third of the copper production of the United States (Tr., Vol. I, pp. 408-409).

The evidence not only fails to show that either the Amalgamated or the Anaconda Company has controlled the price of copper in the markets of the United States or the world, or has made any excessive or unreasonable profits, or has indulged in any discrimination in prices to destroy competitors, or in fixing of prices, or has limited its output, or has treated unfairly any others engaged in the copper business, or indulged in unfair business policies of any kind, or unfair treatment of employes, or has monopolized any commodity necessary in the

mining, production and reduction of copper ores, or has controlled to any extent transportation facilities, or has attempted by unfair methods to prevent competition, either in the production or sale of copper, or ever did any act or thing, or attempted to do any act or thing injurious to the public welfare, but the evidence distinctly shows to the contrary upon each of the foregoing. The testimony shows that the Alice properties acquired by the Anaconda Company are neither actually nor potentially copper producers. This point is thoroughly discussed in subdivision III above and the testimony upon the same will not be here repeated.

VI.

Findings of District Court.

(a) The Court in its decision refrains from expressly deciding the questions raised in reference to the Sherman Anti-Trust Law, and decides in effect that complainants cannot rely upon same for the purpose of rescinding sale of Alice to Anaconda.

(b) That the Alice Company was ripe for dissolution and distribution of its assets to its stockholders; that it was under no obligations to further borrow money to carry on its business, and that under the common law the majority of the stockholders had the right to sell and dispose of its property.

(c) That on account of unity of control between Alice and Anaconda the burden rested upon Anaconda to show that the price paid for the property was adequate, that this burden had not been dis-

charged and that the consideration paid therefor was adequate; that an arbitrary price was *prima facie* inadequate; that there was no market value for such a property as the Alice, and that the price of such properties is in any event purely arbitrary.

(d) The Court seems further to have found that while the Alice Company might have taken stock in the Anaconda Company in exchange for its property, with the view to the sale of the stock and distribution of its proceeds, that Alice could not, under the circumstances of this case, acquire Anaconda stock.

Notwithstanding these findings, the Court provided a method which, in its judgment, was sufficient to correct the error in the proceedings theretofore had, protect the rights of both the minority and majority stockholders of the Alice Company, and under certain contingencies vest title to Alice properties in Anaconda Company, all of which is disclosed in the decision and the decree rendered in this cause (Tr., Vol. I, p. 178; also 143 and 152).

VII.

Findings of the Court of Appeals.

Upon appeal, the judgment and decree of the district court was affirmed, the opinion of the Court being unanimous upon all points except the point that the sale to the Anaconda Company should stand confirmed, but upon this point Mr. Justice Ross dissented (see Tr., Vol. II, p. 989 for the majority opinion upon this point, and p. 991 for the

opinion of the Court upon other points). The Court found as follows :

(a) That the complainants could not invoke a violation of the Sherman Anti-Trust Act by the defendant, Anaconda Copper Mining Company, for the purpose of rescinding the sale (Tr., Vol. II, pp. 991-994).

(b) That the condition of the Alice Company was such as to justify, at common law, the sale of its properties by a majority of its stockholders and the winding up of its affairs (Tr., Vol. II, pp. 997-998).

(c) That under the articles of incorporation of the Alice Company, and the statutes of the State of Utah, the directors of the Alice and a majority of its stockholders had a right, irrespective of the financial condition of the Company, to sell the whole of its properties (Tr., Vol. II, pp. 998-1000).

(d) That by reason of the unity of control between Alice and Anaconda, the burden was upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that this burden had not been discharged; and further found that there was concealment upon the part of Mr. Ryan, Managing Director of the Anaconda Company, of material facts known to him and unknown to the stockholders of the Alice, affecting the value of the Alice property (Tr., Vol. II, pp. 1000-1006).

(e) The majority of the Court held that the method provided by the district court for protecting the rights of both the minority and majority stockholders of the Alice Company, by ordering a sale, at public auction, to the highest and best bidder, of the Alice properties, under the restrictions

and limitations provided in the interlocutory decree, was right, and that the final decree of said district court should be affirmed (Tr., Vol. II, p. 989).

VIII.

General contentions of appellees upon this appeal.

(1) Appellees contend that upon the record in this case the findings of fact and conclusions of law upon all essential controverted questions should have been in favor of the Appellees, and that a final decree, without interlocutory, should have been unconditionally given in their favor, refusing all relief prayed for by complainants and affirming the sale of Alice properties to Anaconda.

(2) That even though the findings of fact made by the Court be not disturbed, and be held by this Court to be justified by the testimony in the case, the decree of the Court is nevertheless correct, and should in all respects be affirmed.

ARGUMENT.

I.

Introductory Statement.

We shall first discuss the questions stated in Subdivision 1 of Title VIII, that upon the record in this case findings of fact and conclusions of law, upon all essential questions, should have been in favor of the Appellees; that no interlocutory decree should have been entered, but that a final decree should have passed unconditionally in their favor, refusing all relief prayed for by complainants, and confirming the sale of Alice properties to Anaconda.

No complaint is made as to regularity of any formal proceedings by which the conveyance in question was authorized. The sale was authorized and ratified by a vote of 289,590 shares, or more than seventy-two per cent, of the total outstanding stock of the Company, as against 5,510 shares voting against the proposition. The 5,510 shares voting against the proposition were owned by Baer, Walker and Geddes, complainants herein. The stockholders' meeting was held May 27, 1910, and it was not until November, 1911, and until long after the stockholders had voted to dissolve the Alice Company, that this suit was instituted.

It is contended by Appellants that the sale should be set aside because, under the laws of the State of Utah, a conveyance of all the property of the Alice Company could not be made without the consent of all the holders of its stock; because the consideration for the sale was capital stock of the Anaconda Copper Mining Company; because of

unity of control and inadequacy of price, and because the acquisition of the Alice property by the Anaconda Company was in contravention of the Sherman Anti-Trust Law.

The circumstances under which private corporations may sell and dispose, by absolute conveyance, of all of their property, are clearly stated in Thompson on Corporations, Second Edition, Section 2429, as follows:

"FIRST: Private corporations, when expressly authorized by statute, charter or by-laws, may sell and dispose of all the corporate property;

"SECOND: Private corporations, by the unanimous consent of all stockholders, in the absence of express prohibition, may sell and dispose of all corporate property;

"THIRD: The directors and managing officers have the power to dispose of all the property where the governing statute provides that private corporations may sell their entire property;

"FOURTH: Where the corporation is in failing circumstances, or, is in fact insolvent, the directors and managing officers may dispose of all the property or make an assignment of all corporate property for the benefit of creditors;

"FIFTH: The majority stockholders may alienate all the corporate property when expressly authorized by statute, charter or by-laws;

"SIXTH: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable and where it would be ruinous to the corporation and the stockholders to continue the business; or, when there are insufficient funds to continue

the business and no money with which to pay existing indebtedness; *or*, when the corporation is in failing circumstances, *or* is in fact insolvent."

The Alice Company, at the time of the sale in question, had the authority to dispose of all of its property in the manner employed; (a) because it was expressly authorized by its articles of incorporation and by statute to do so; (b) because at the time of the sale the Alice Company was not, and had not been for many years, a going corporation; it did not have sufficient funds to continue its mining business and had no means of raising the same to carry on such business, and had no money with which to pay its then existing indebtedness.

II.

A conveyance of all the property of the Alice was expressly authorized by its articles of incorporation and by the statutory law of the State of Utah.

In the original articles of incorporation of the Alice Company, as shown by the certified copy of those articles introduced in evidence (see Tr., Vol. I, pp. 238-253), and as pleaded by complainants, is the following:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, millsites, furnaces and reduction and refining works; to buy, sell and exchange mineral ores and bullions; to buy, lease, contract and operate roads, tramways and freight and transporta-

tion routes to facilitate the business of the Company; to appropriate, buy or sell water, water rights and ways for conducting the same; and generally, to do all kinds of business incident to, connected with or convenient for the management of a general mining business in the territories of Utah, Montana, Idaho and in any state or territory of the United States."

Section 322, Compiled Statutes of Utah, of 1907, and ever since continued in force, among other things, provides as follows:

"* * * And any corporation now existing, or that hereafter may be organized under the laws of this State for the purpose of mining, or the exploration or development of mining property, including lands bearing metal, stones, limestone, oil, petroleum, asphalt and other hydrocarbons, shall, in addition to the powers above enumerated, have the power to purchase, take on bond or lease, or in exchange, or locate, or otherwise acquire any lands, mines, options, territory, fields, or claims, and to sell, convey, lease, bond, mortgage, dispose of, or otherwise deal in the same to such extent as the board of directors may deem prudent, subject always to the provisions of the articles of incorporation and by-laws; provided, that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the board of directors shall not be valid or binding on the corporation until confirmed by a vote of a majority in amount of the stock outstanding at a meeting of the stockholders duly called to consider such action of the board. When the articles of association provide that the property of the corporation may be sold, mortgaged, or otherwise disposed of by the directors or by the stockholders, sales made in accordance therewith shall be binding on the company."

It will be observed that the articles of incorporation contained no express prohibition against the sale of all the property of the Alice Company by a majority of its stockholders, and it has been repeatedly ruled that provisions substantially like those above quoted conferred this power.

Pitcher v. Lone Pine Consolidated Mining Co., 81 Pac. 1047;

Lang v. Reservation Mining & Smelting Co., 93 Pac. 208;

Traer v. Lucas Prospecting Co., 99 N. W. 290;

Maben v. Gulf Coal & Coke Co., 56 So. 607.

But, however, this may be it is clear that under these articles of incorporation and Section 320, Utah Statutes, such power is conferred upon the board of directors and a majority in amount of the outstanding stock of the company.

The provisions contained in the foregoing statute, that a mining company may sell, convey, lease, bond or dispose of its property, or otherwise deal in the same to such extent as the Board of Directors may deem prudent, subject to the provisions of the articles of incorporation and by-laws, and provided that in case the articles of incorporation do not provide for the sale or other disposition of the property of the corporation, then the act of the Board of Directors shall not be valid or binding upon the corporation until confirmed by a vote of a majority in amount of the stock outstanding at the time of the stockholders' meeting called to consider such action of the Board, provide plain, direct and unequivocal authority by the Board of Directors to make a sale of all the property of the corporation, provided the articles of incorporation authorize

them to do so. In the event of the articles of incorporation failing to contain such authority, it is provided that such sale is subject to the subsequent confirmation by a vote of a majority in amount of the capital stock outstanding at the meeting of the stockholders called for the purpose of considering such action before it becomes binding.

The foregoing statute necessarily carries with it the meaning above suggested, otherwise there would be no purpose in its enactment, and it would be without effect and without meaning. At common law, the board of directors of a corporation are authorized to sell, lease, mortgage or otherwise dispose of the property of a corporation, subject to the limitation that they cannot sell or dispose of the entire property of the corporation. It can hardly be contended that the above statute was intended as a limitation upon the power of the Board, but rather from its terms and the language employed, it must be construed to be an extension of the power already possessed. If it was intended to limit the power of the Board, it would have been idle to have suggested that the action of the Board of Directors in selling the property of the corporation was not effective unless confirmed by a majority of the stockholders, and that of itself is an extension of the common law power. It follows, therefore, if the Utah statute is to be given any force or meaning whatever, it must necessarily be held that the common law power of the Board of Directors was extended, and that with the consent of a majority of the stockholders, the directors of a mining corporation could, as a matter of fact, dispose of all the property of the same.

Language such as is employed in this statute will not be so construed as to become a grant of power

which already existed. The clear intent to extend the power of the board of directors of the corporation and of its stockholders is manifest, and the language employed well-adapted for this purpose.

Such was the view of the Court of Appeals touching this point. That Court said:

"By the Utah statute referred to, the powers of all such corporations then existing, or that should thereafter be organized under the laws of the state, for any of the purposes therein enumerated, were manifestly extended beyond the common law powers, and under its express terms, in view of the charter of the Alice Company, we do not think it admits of doubt that the Board of Directors of the Alice company, in the absence of any fraud or lack of good faith, and with the consent of the majority of its stockholders, was empowered to sell and dispose of all of the property of that corporation" (Tr., Vol. II, p. 999).

It is our contention that it is immaterial that this act was not in force at the time of the incorporation of the Alice Company, for the reason that at the time of the incorporation of that company in 1880, there was in force the following statutory provision, adopted by the Utah Legislature on February 20, 1874, as follows:

"The Governor and legislative assembly may hereafter modify or repeal this act, but if it be repealed, or if the franchise of any corporation organized under this act, shall be forfeited, the corporation may continue for the purposes specified in Section 9 of the act, to which this is an amendment."

Compiled Laws of Utah, 1876, page 232.

Subsequently, upon the adoption of the Constitution of the State of Utah, a repeal, alter and amend provision, governing the charters of corporations, was made a part of the fundamental law, and is found in Section 1 of Article 12 of the Utah Constitution.

There can be no question but that the territorial repeal provision, as above set forth, in its terms was broad enough to cover, and plainly covered, such a change in the statutory law affecting corporations as is found in section 322, *supra*, and as this subsequent act authorizing a corporation to dispose of all of its property is plainly within the provisions of the repeal act of 1874, it must be held applicable to the present situation, unless such holding would render the repeal provision repugnant to the Constitution of the United States.

It is counsel's contention, as we understand it, that because of constitutional limitations, the modifying and repealing act must be construed to have been intended to apply only to such changes in the statutory law affecting corporations as affected the contract between or the rights of the corporations as between it and the state, and cannot be construed to apply to the implied or express contracts existing between stockholders of a corporation and the corporation, or between the stockholders themselves, and that a provision, affecting the right of a corporation to dispose of all of its property would impair or seriously affect the implied or express contracts existing between the stockholders themselves or the stockholders and the corporation.

The very question herein presented was before the Supreme Court of the State of Montana upon a statute very similar to the one in question, in the

case of *Allen vs. Ajax Mining Company*, 30 Montana, page 490. In that case the constitutionality of the act of the Legislative Session of 1899, known as House Bill No. 132, providing for sale of all the property of a corporation upon a vote of two-thirds of its stock, if attempted to be applied to corporations formed before the passage of the act, was before the court for determination. The Court arrived at the following conclusion (see p. 505) :

"It cannot be said then, that the enforcement of the provisions of House Bill 132 will impair the obligation of any contract which the plaintiff entered into when he became a stockholder of this company, for the reason that the reservation of this authority to alter, amend, or repeal the law under which the company was organized became as much a part of the law of its creation as any other provision respecting it, and became a part of the charter, modifying what would otherwise have been an absolute grant (Citing 4 Thompson on Corporations, Section 5408).

"It is to be understood, too, that this reservation possesses equal vigor, whether contained in the charter of the particular corporation itself, or in the Constitution or general laws of the state under which the corporation is organized. While there may be some slight conflict in the authorities, the great weight of authority clearly and unequivocally sustains such statutes (citing many cases).

"The theory upon which these statutes are upheld is that whatever rules or regulations for the management, operation or control of a corporation which the legislature might have incorporated in the law under which the corporation was organized may afterwards properly be engrafted on its charter by virtue of this reserved power existent at the time of the formation of the corporation" (citing many cases).

It was accordingly held that the statute was constitutional.

Section 67, Thompson on Corporations, is as follows:

"But if the power to alter or repeal is reserved in the incorporating act or otherwise, as above stated (by the Constitution or a general statute), the legislature may make such alterations or amendments as it may see fit, and the judicial courts shall have no power to consider their propriety."

The view that the reserving clause is for the benefit of the State was set forth in *Zabriski vs. Hackensack, etc., Ry. Co.*, 3 C. E. Green 178; 90 Am. Dec. 617, by Chancellor Green, and the dissenting judges in the sinking fund cases took a similar view. Chancellor Green, in the *Zabriski* case, cited *supra*, concedes that the great weight of authority is against his view as to the purpose and effect of the reservation. See also on page 624:

"This view of the case is so clear upon principle that I feel constrained to be guided by it, although the weight of decisions in other states is against it."

In Thompson on Corporations, Section 90, it is said:

"The reserved power of the legislature extends not only to altering the charter, for any purpose connected with the public interests, but also to altering it for the mere purpose of changing the rights of the corporators as among themselves. This view has been taken in New York, in Massachusetts, in Illinois, in Missouri, and in other states. A necessary result of this doctrine is that the legislature may authorize any change in the organization, pur-

poses or powers of the corporations which the majority may desire, contrary to the will of the minority."

In the case of *Schenectady & Saratoga Plank Road Company vs. Thatcher*, 11 N. Y. Court of Appeals, 114, the Court was required to determine whether, under a similar reservation, a subscriber was released from his subscription by reason of an increase of the capital and the construction of a branch road in pursuance of an act of the legislature amendatory of the original act of incorporation. This change was so fundamental in character that it would have released the subscriber at the common law. The Court, by Johnson, Judge, says:

"This condition (referring to the reservation of the right to alter, suspend or repeal), is thereby engrafted upon the original constitution of companies formed under this act. The subsequent act was passed and operates under that reservation of power to the legislature. The corporate property is subject to that power by reason of the assent to its exercise implied from and by an organization under the act which reserves it. Everyone who entered into such company is aware of the reservation of power and of the possibility of its exercise, and trusts, as in many other matters he must trust, to the wisdom and justice of the legislature, that this power will not be abused.

* * * The persons who contract to take shares in a company under such an act, contract subject to the same reservation of power. The courts are bound to read their agreement with the legislative condition. They agree to take and pay for the shares for which they subscribe, subject to the power of the legislature to alter or repeal the charter of the company, and it does not lie in their mouths to complain that the power has been exercised."

The subject receives a very full and a very satisfactory discussion in the case of *Durfee vs. Old Colony & Falls River Ry Co.*, and others, 5 Allen (Mass.) 240, to which opinion we respectfully call the Court's attention, and to the many cases cited therein.

See also:

- Buffalo and N. Y. Cen. R. R. Co. *v.* Dudley, 4 Kernan 575;
- Looker *v.* Maynard, 179 U. S. 46;
- Hamilton Gas Light Co. *v.* Hamilton City, 146 U. S. 270;
- Veener *v.* United States Steel Co., 116 Fed. 1013;
- Market St. Ry. Co. *v.* Hellman, 109 Cal. 571;
- Williams *v.* Nall, 108 Ky. 21; 55 S. W. 706;
- Missouri R. R. Co. *v.* Kansas, 216 U. S. 274;
- Germer, *et al.* *v.* Triple Steel, etc., Co., 54 S. E. 509.

Under the foregoing cases it is very plain that so far as Section 322 of the Compiled Statutes of Utah is concerned, the extension of power therein conferred to mining corporations which permits a sale and disposition of the entire property, upon such sale being confirmed by a majority of the stockholders, was a constitutional exercise of the power reserved by the legislature.

The Appellants contend that so far as a Utah corporation is concerned, this question is foreclosed by the decision of the Supreme Court of Utah in the case of *Garey vs. St. Joe Mining Company*. Appellants misconstrue the scope and force of this

decision. It is not a precedent for the instant case. The question before the court was the right of a corporation, organized before the passage of the statute under which the proceedings were sought to be taken, to amend its articles of incorporation, which, as originally filed, contained an express provision and agreement between the stockholders that the stock should not be assessable, which the statute of Utah left the stockholders free to enter into at their option. At the time of the organization of the corporation the stock was expressly declared by statute non-assessable, unless the articles provided that it should be assessable, and it was also provided that it could not thereafter be made assessable without the consent of all the stockholders of the Company. The subsequent statute provided that the stock might be made assessable by a two-thirds vote of the stockholders. The court held this provision of the latter statute violative of the provisions of the Constitution of the United States, and further held that the provisions in the articles of incorporation contained a contract between the stockholders which, without violating the constitution of the United States, could not be impaired or changed. While the court did not perhaps take the broad view of the right to amend or repeal taken by many courts, it did recognize the rule that when the corporation was organized with a statute in force providing for the amending or repeal of the charter in force, that provision constituted a part of the contract between the state and the corporation, the corporation and the stockholders and the stockholders and themselves, and it plainly held that where any public right was concerned, a full right to amend or repeal was given.

Beyond this, in defining what changes could be made, the court was very guarded in its expression.

The case is easily differentiated from the present one. In the first place, the statute which we are now considering was not reviewed, neither has it ever been, by the Supreme Court of Utah, to our knowledge. In the second place, the reasoning, by means of which the Supreme Court of Utah came to its conclusions, is not at all applicable to the present one, and an analysis of the decision will clearly show that had this been the question before the court the decision would have been otherwise. In the third place, the question therein considered was whether, in defiance to the written agreement between the stockholders that their stock should be non-assessable, which agreement the Legislature expressly permitted them to make, a majority could be authorized to make the same assessable, thus compelling an unwilling stockholder to contribute more to the capital of the corporation than he had agreed to contribute, while in this case the question relates to the conditions under which the corporation may own, hold and dispose of its own property, which is of the very essence of the grant of corporate powers by the state.

The controlling elements in this decision were that by the amendment to the Utah law and the action of the stockholders, the stock of the stockholders, their own personal and private property, was rendered liable to forfeiture; that the stockholders were, in order to prevent this forfeiture, compelled to contribute more capital to the corporation than they had agreed to contribute, and that an express agreement had been voluntarily entered into between the stockholders in the articles of incorporation which could not be violated.

None of these reasons have any application to the question which we are now considering. The gist of the reasons for the decision is well stated as follows:

"It must be conceded that the full-paid capital stock became the private property of the stockholder. As between himself, the corporation, and his co-corporators, he paid the full consideration therefor, and paid all that was agreed by him to be paid. To now say that the legislature, in face of such an agreement as was here made by the corporators, may authorize a majority to compel a dissenting minority to buy it over again, not only once, but as many times as they may, in good faith, determine, by the enforcement of additional contributions of capital for mere corporate purposes, and to make a sale of their stock, resulting in a forfeiture of all their rights and equities in and to the assets of the corporation, if the unwilling members do not see fit to yield to such compulsion, *is conferring a power which gives to the majority the absolute dominion over the private property of the stockholders, permits a disturbance of vested rights and the impairment of contract obligations, within the protection of the federal constitution.*"

The Court clearly differentiated that case from the present one by the following language:

"As the authorities say, this limited liability is a part of the corporate privilege conferred by the state, and the right to repeal the franchise itself includes the right to repeal any part of, or altogether, the franchise or privilege of limited or *non-personal liability*. The immunity of such liability to the corporators existed in the first instance only because the

state had granted it to them, and what it has granted it may, under its reserved power, take away or modify."

The right to hold property is of the very essence of the grant of the state to the corporation, without which grant it could not take any title whatsoever. The state having granted this right to the Alice Company under the repealing clause of the statute in force at the date of its organization, it had the right to regulate the manner in which it should so hold it, and the manner in which it might dispose of it.

The Court also laid much stress upon the proposition that the non-assessable character of the stock was made a part of the written agreement between the stockholders by the articles of incorporation, and refused to decide whether, if it should not have been the case, the judgment of the Court would have been otherwise. Among other things it said:

"In the Rhode Island case the court seems to hold a contrary doctrine, though in that case it is not made to appear that the full-paid capital stock was made non-assessable by the original articles of incorporation, and in that respect the case may be distinguishable from the Nebraska case and the case at bar."

Again it said:

"The questions as to whether, under the enactment of 1903, two-thirds of the stockholders, or a majority, under the enactment of 1905, are legally empowered to authorize a levy of assessments on full-paid capital stock against a dissenting minority when the original articles place no prohibition on the levying of assessments, or contain no stipulation on the subject, * * * are not now before

us, confined to the question which is before us, we think the demurrer ought to have been overruled."

In holding this decision inapplicable to the instant case, the Circuit Court of Appeals, among other things said:

"It is true that at the time the Alice Company was incorporated the above quoted provisions of the Utah statute had not been enacted, but there was then in force a statutory provision of the territory authorizing the amendment, alteration or repeal of the statute under which the Company was incorporated. (Compiled Laws of Utah, 1876, p. 232), which power was subsequently made a part of the fundamental law of the state (Sec. 1, of Art. XII of the Constitution).

"Such reserved power, it was held by the Supreme Court of the state in the case of *Garvey v. St. Joe Mining Co.* (91 Pac. 369), does not extend to an agreement which the statute had permitted the stockholders of a corporation it had authorized to be incorporated to make among themselves, that its stock should be paid for in full and thereafter be non-assessable. But there was no agreement of that nature in the articles of incorporation of the Alice Company; by which as has been seen, the corporation was given the general power to buy, lease, hold, own, operate, and sell, mines, mining claims, mills, mill-sites, reduction and refining works, and to do all kinds of business incident to, connected with, or convenient for the management of a general mining business.

"There is in the powers thus conferred by its charter on the Alice company no express prohibition against the sale of all of the property of the corporation, nor is there in the case any express agreement either between the corporation and its stockholders, or between

the stockholders themselves, that such a conveyance should not be made—the most that can be claimed in that regard being that a conveyance of all of the property of the corporation might terminate the business of the company and thus defeat the objects of its incorporation; but not necessarily so, for, as said by the Supreme Court of Montana in *Forrester v. B. & M. Co.*, *supra*, (21 Montana, 544, 559) :

“A transfer or other disposition of all its property will not *ipso facto* dissolve a corporation, although the practical effect thereof may be to defeat the object of its organization. This is so because ownership or possession of property is not essential to corporate existence (citing cases). A flourishing mining corporation may desire to sell or otherwise dispose of its entire assets for the purpose of reinvesting the proceeds in a new enterprise within the corporate purposes, or of acquiring other mining property. Such sale or other disposition might be made at common law with the unanimous consent of the stockholders, without working a dissolution; nor would a dissolution be produced by the sale or assignment of the whole property of an insolvent corporation made by the directors—either with or without the consent thereto of all the stockholders therein.”

Salt Lake Auto Motor Co. v. Keith-O'Brien Co., *et al.*, 143 Pac. 1015.

We cannot accede to appellants' contention that the Garey case, if in point, forecloses the consideration of the question now presented by the courts of the United States. The question before the Supreme Court of Utah was whether the provision in the articles of incorporation, then being considered, constituted a contract between the stockholders of the company, and whether the statute

granting authority for the assessment of such stock impaired the obligations of such contract. The Court held that there was such contract as was subject to impairment; that the statute impaired the use, and therefore violated the provisions of the Constitution of the United States.

By the Act of December 23, 1914, Chapter 2, 38 Stat. L. 790, touching writs of error from judgments and decrees of state courts, it is provided thus :

"It shall be competent for the Supreme Court to require, by *certiorari* or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court, although the decision in such case * * * may have been against the validity of the state statute or authority claimed to be repugnant to the Constitution, treaties, or laws of the United States * * *."

If the contention of the appellants be correct, that the courts of the United States are bound by the decision of the state court upon such question, then the writ so granted is of no utility whatever, and the review an idle and useless procedure. It seems that under such circumstances it is the duty of the courts of the United States to use their independent judgment.

Vicksburg v. Water Works Co., 202 U. S. 453-467;

Detroit United Ry. v. Michigan, 242 U. S. 238-249.

In the former case, page 467, the Court said:

"But if the doctrine of Mississippi were to be applied, and with due respect to which the

decisions of its highest court are justly entitled, it has been frequently held, in passing upon a question of contract, in circumstances such as exist in this case, involving the constitutional protection afforded by the Constitution of the United States, this court determines the nature and character thereof for itself."

And in the latter case, page 249, the Court said:

"But, notwithstanding what was there said, it is too well settled to be open to further debate, that where this court is called upon in the exercise of its jurisdiction to decide whether state legislation impairs the obligation of a contract, we are required to determine upon our independent judgment these questions: (1) Was there a contract? (2) If so, what obligation arose from it? and (3) Has that obligation been impaired by subsequent legislation."

If the legislature had power, under the repeal provision to terminate the existence of a corporation at any time, thereby compelling a sale of all its property and a distribution thereof, it must be granted that it had the power to authorize a majority or two-thirds of the stockholders to take steps which would accomplish the same purpose. That under the repeal statute, existing at the time of the organization of the Alice Company, and the subsequent provision of the Constitution of the state, the legislature of Utah had power at any time to repeal and set aside the charter of any corporation theretofore formed while the act was in force, is well settled by the authorities. See:

Thompson on Corporations, 2nd Ed., 411-414, and cases cited;

Cook on Corporations, 7th Ed., Vol. 2, Sec. 639, page 1972, and cases cited;

Greenwood v. Freight Co., 105 U. S. 13.

The legislature clearly having power to absolutely repeal and annul the charter of the Alice Company, and the legislature having, by its charter, granted the right to the Alice Company to hold, acquire and dispose of property, and this being the controlling purpose for which it was organized, may not the legislature, by subsequent legislation, regulate either the acquisition or transfer of the same? And how can it be said that this is a question in which the stockholders alone are concerned and in which the state has no interest?

Moreover, aside from the consideration of Section 322 of Compiled Statutes, in connection with the repealing act passed in 1874, we submit that Section 322 is clearly applicable to the Alice Company under the provisions of the following act of the Utah legislature. Section 353 of the Revised Statutes of Utah of 1898 is as follows:

"Rights and duties continued. Every corporation heretofore lawfully organized under any law of Utah, and existing at the time of the taking effect of this revision, shall continue in existence with all the rights, privileges, powers, duties and obligations conferred or imposed by the laws under which it has heretofore existed, as modified or controlled by the provisions of these statutes."

This section in exactly the same form is found as Section 353 of the Compiled Laws of Utah of 1907, in which compilation is also found Section 322 above discussed. Under this provision, any corporation organized before the adoption of Section 322 was made subject to the provisions of that section, if it elected to continue business. If it did not desire to be controlled by the provisions of Section 322 it, of course, had the option of sur-

rendering its charter and discontinuing business. Having elected to continue business, it must be held to have irrevocably consented to be bound by the provisions of Section 322, which were extended over all such corporations which should continue in existence by Section 353. As the legislature clearly had the power to repeal the charter of any corporation, it clearly had the right to compel the corporation to either surrender its charter or subject itself to the provisions of any particular statute, and certainly if the provisions of this Section 353 mean anything, they must mean that any corporation which continued its existence in Utah after 1898, or after 1907, became and thereafter was subject to the laws found in those revisions, and therefore, by continuing its corporate business after 1898 the Alice Company became irrevocably bound by Section 322 hereinbefore cited.

Louisville & Nashville Ry. Co. v. Garrett,
231 U. S. 298, 315.

The suggestion that Section 322, as amended by the laws of the State of Utah of 1905, is unconstitutional, because the amendatory act contains more than one subject, is without force. The Act relates in its entirety to the powers of corporations, and all its provisions are germane to the title. It is said that the title gives no intimation that mining corporations are to be invested, by the amendment, with any powers other or different from corporations generally. Mining corporations were not treated, in the laws of Utah, separately from other corporations, and were included within this general term. Due notice was given by the title of an amendment to the sections of the statute touching the powers of corporations, which authorized the

Legislature to amend the powers of a mining corporation as well as the powers of any other corporation. It is unnecessary to pursue this subject. The objection of appellants, and the basis thereof, is not made clear in their brief, and no authorities whatever are cited in support of their contention. Under such circumstances it is not thought that the question invites serious consideration.

III.

The general rule that corporations must have unanimous consent of all stockholders in order to dispose of their property has no application in Utah.

Again, we submit that the general rule invoked by appellants that a corporation must have the unanimous consent of all the stockholders in order to dispose of all its property, which rule is based upon the fact that such action would terminate the corporate existence and defeat its purposes prior to the time for which the corporation was organized, can have no recognition under statutory law, such as exists in Utah. Under the provisions of Chapter 72, Sections 3661, *et seq.*, two-thirds of the stockholders of a corporation may arbitrarily at any time cause the dissolution of a corporation which, of course, is followed by the distribution of its assets by sale, or otherwise, among its creditors and stockholders. This is exactly the same proceeding which has been taken, or was being taken, in the case of the Alice Company, with the exception of the order in which the proceedings were

taken. With such statutory provisions in force, can it be reasonably urged that the purposes for which a Utah corporation is formed cannot be defeated without the assent of all of the stockholders?

IV.

The findings of the District Court and Court of Appeals that the majority stockholders of the Alice Company had full power to dispose of all its property by reason of its financial condition, the state of its property and corporate business and its inability to further carry out the purposes for which it was created is fully supported by both the law and the evidence.

Before the majority of the stockholders of a corporation may sell all its property against the protest of the minority, it is not necessary that the corporation should be either insolvent or in imminent danger of insolvency, in the technical sense of that term. This power may be exercised either when the corporate business has become permanently unprofitable, or where it would be ruinous to the corporation or the stockholders, to continue the business, or where there are insufficient funds to carry the same on, and no money with which to pay existing indebtedness, or where the corporation is in failing circumstances, as well as when it is in fact insolvent, or in imminent danger of insolvency.

In subdivision Sixth of Section 2429, Thompson on Corporations, Second Edition, the author thus states the rule:

"SIXTH: The majority stockholders, even as against the protest of the minority, may dispose of all the property when the corporate business has become unprofitable and where it would be ruinous to the corporation and the stockholders to continue the business; *or*, when there are insufficient funds to continue the business and no money with which to pay existing indebtedness; *or*, when the corporation is in failing circumstances, or is in fact insolvent."

The Supreme Court of Montana, in the case of Forrester and MacGinnis against the Boston and Montana Consolidated Copper and Silver Mining Company, 21 Montana, page 544, early recognized this exception to the general rule; and in *Treadwell v. Salisburg Mfg. Co.*, 7 Gray, 393, one of the leading cases upon the subject, the rule is well stated as follows:

"By accepting a charter, they do not undertake to carry on the business for which they are incorporated indefinitely, and without any regard to the condition of their corporate property. Public policy does not require them to go on at a loss. On the contrary, it would seem very clearly for the public welfare, as well as for the interest of the stockholders, that they should cease to transact business as soon as, in the exercise of a sound judgment, it is found that it cannot be prudently continued. If this be not so, we do not see that any limit could be put to the business of a trading corporation, short of the entire loss or destruction of the corporate property. The stockholders could be compelled to carry it on

until it came to actual insolvency; such a doctrine is without any support in reason or authority."

See also

Hayden v. Official Hotel Red Book & Directory Co., 42 Federal, 875;

Savings Bank v. O'Reilly, 10 S. W. 865;

Bowditch, *et al.*, v. Jackson, 82 Atlantic, 1014;

Sewell v. East Cape May Beach Co., 25 Atlantic, 929;

Traer v. Prospecting Co., 99 N. W. 290;

Price v. Holcomb, 56 N. W. 407, 411;

Thompson on Corporations, 2nd Ed., Secs. 2424 and 2429. Note.

Cummings v. Parker, 157 S. W. 629;

Miners Ditch Co. v. Zellerbach, 37 Cal., 543; 99 Am. Decs. 300;

Peabody v. Westerly Waterworks, 37 Atlantic 807.

The condition of the Alice Company in the respects hereinbefore mentioned is clearly delineated in subdivision III and subdivision IV of our statement in this case, *supra*, and it would only tend to prolixity to now restate the same. The Court's attention is invited to this statement. It clearly demonstrates that the corporate business of the Alice Company had for many years been, and was then, permanently unprofitable; that it would have been ruinous to the corporation and the stockholders to have attempted to resume the business of mining operations upon the Alice property, and bear the enormous expenses thereof without assurances of success; that there were insufficient funds to resume and carry on such mining opera-

tions, and that there was no possible way by which such funds could be raised or even obtained by mortgages upon the property; that there was no money with which to even pay the existing indebtedness of the Company; that so far as its business was concerned, and so far as it was concerned, it was in failing circumstances, and utterly unable to further carry out the purposes for which it was organized.

Upon this point the District Court (Tr., Vol. I, p. 180), found as follows:

"At the time of sale Alice was dormant. Its long-time specific operations for silver had finally failed, and it was in debt; its plant destroyed; its mines closed and flooded; an expense and unprofitable for some 17 years next prior to the sale. Alice was ripe for dissolution and distribution of its assets to stockholders. Although it had large bodies of unworkable zinc-silver ores and much virgin ground, under such circumstances no rule of law obligates a corporation to borrow, if possible, necessarily large sums of money to pay debts and expenses or to enable it to rehabilitate its mines and experiment and explore, however desirous minority stockholders might be to assume the risk. For that is a matter of judgment in which the majority controls. By reason of the circumstances there was common-law power, co-extensive with any possibly given by statutes or articles without unanimous consent to sell all Alice property."

Likewise the Court of Appeals, among other things, said (Tr., Vol. II, p. 997):

"We are unable to agree to the contention on the part of the appellants that the properties of the Alice company in the condition they were at the time of the sale, and for years theretofore had been, could not be legally sold

and conveyed by the directors of the company without the consent of all of its stockholders. We quite agree that the company cannot be regarded as then insolvent, for it owed but \$34,101.56, payment of which, so far as appears, was not even being asked, much less urged (by the Butte Coalition Company, which it appears was the creditor), and owned properties for which the Anaconda Copper Mining Company was willing to pay the equivalent of over one and one-half millions of dollars. At the same time, all of the ores the properties were known to contain that could be worked at a profit had been extracted and disposed of many years before, and the development of other ore therein of commercial value, should such exist, necessarily involve the risking of a large amount of money. The Anaconda company, no doubt, could afford to take that risk—especially as the evidence shows that the exploration and development of the Alice properties could be made from the workings of some of its own properties—and it is reasonable to suppose that it had sufficient information to justify it in undertaking to do so. But the Alice company not only had no money with which to make such explorations and development, but was in debt, which indebtedness was necessarily gradually increasing. Its stock was non-assessable and therefore its stockholders could not be made to furnish the money essential to any further exploration of its properties. In the course of his testimony Ryan, the president of the company, said, among other things:

“There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct

company operation, except taking care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations.'

"The fact that the Butte Coalition Company owned 234,000 of the 400,000 shares into which the capital stock of the Alice company was divided, which 234,000 shares were acquired by the former company from Ryan, and that he acquired them in large part from men also of large means, and that either or all of such owners might themselves have furnished or secured the money necessary for the further development of the properties, is, in our opinion, wholly unimportant. Conceding their ability to have done so, they were not obliged by any rule of law or equity to do it."

The contention of appellants that the substance of the circular sent out by the management to the stockholders of the Company affects in the least the right of the stockholders of the Alice Company to

dispose of its entire property, if they elected so to do, granted by the common-law, by reason of its having ceased to be a going concern, is clearly unfounded. What, if any, influence this circular had on the minds of the stockholders is not made to appear, and is, in our judgment, wholly immaterial. The right existing, the sale may not be avoided, even though the reason of the stockholders in voting the ratification might be otherwise, but there is no justification for the conclusion that the stockholders did not have in mind their rights, so reserved by the common law, as well as the statutory rights, undoubtedly given them by the laws of the State of Utah. If the contents of this circular were material upon this point, it is sufficient to say that the statements therein contained were abundantly sufficient to justify a sale of this property in pursuance of this power. Neither are the reasons given by Mr. Kelley and Mr. Ryan, referred to in appellants' brief, as to why the Anaconda Copper Mining Company desired to purchase the Alice properties, of any consequence whatever. They relate wholly to the purpose of the Anaconda Company in purchasing these properties, and not to the reasons why the Alice Company desired to sell the same to said Company.

V.

Both the District Court and the Court of Appeals erred in holding that by reason of unity of control of the Alice Company and Anaconda Company the burden of proof rested upon the Anaconda Company to show that the sale was fair and the consideration adequate, and that this burden was not discharged.

The Court below ruled in effect that on account of unity of control between Anaconda and Alice, the burden was cast upon defendant, Anaconda Copper Mining Company, to show a fair sale and adequate consideration, and that this burden had not been discharged. This ruling was in line with the contentions of Appellants in this case, and is unjustified by either the law or the testimony. In our statement, subdivision II, we treat of the relations between Anaconda and Alice. To this statement the attention of the Court is particularly invited, and the same is incorporated in this subdivision by reference. Therefrom it appears that Mr. Ryan was a director and president of the Alice Company, and also managing director of the Anaconda Company. There were no common directors of the two companies. Mr. Ryan and Mr. Thayer were also directors of the Butte Coalition Company, and likewise directors of the Anaconda Company. It also appears, among other things, that the Butte Coalition Company was incorporated for the purpose of acquiring, and shortly after did acquire, the capital stock of a corporation

known as the Red Metal Mining Company, and also purchased and acquired a controlling interest, 234,215 shares out of 400,000 shares, of the Alice Company. The funds with which Coalition purchased Red Metal and Alice stock were obtained by general subscription to the stock of the Coalition Company. At the time of its incorporation this Company had more than two thousand stockholders, and at the time of its dissolution over three thousand stockholders. Thomas F. Cole, disassociated in every way from Anaconda or Amalgamated, was President, and the Board of Directors was, in the main, disinterested persons. No director of Alice was ever connected with either Anaconda or Amalgamated, save John D. Ryan. In affairs of the Alice Company, Mr. Ryan testified that he was guided largely by the advice of Carson and Thornton, mining men of long experience and familiar with the Butte properties, and that this was particularly true in relation to a determination of the reasonable price of Alice properties. Beneficial ownership of stock held by the directors of the Alice Company rested in Butte Coalition, but that did not connect such directors with the Amalgamated or Anaconda Companies; and there is positively no basis upon the record for Appellants charging that Coalition or Alice were in any way creatures of, or controlled by, Amalgamated or Anaconda, or their officers. There are a large number of stockholders in Alice, not interested in Coalition, who have approved of the transaction with Anaconda. Butte Coalition and its stockholders were also interested in and approved the same; and to hold that the transaction can be voided and the interests of the approving Alice stockholders and Coalition Company and its stockholders injuriously

affected, would require most substantial proof of control of Alice by either Anaconda or Amalgamated. No such proof is found in the record. The rule announced by the learned Courts, and maintained by the Appellants, cannot be sustained. The authorities cited by Appellants upon this point apply in the main to cases where the director was dealing with the corporation in his personal capacity, and was making a personal profit out of the transaction, or where a majority of each board were common directors. We believe the general rule to be that a contract between a director and his corporation is not void, but is voidable at the option of the corporation if exercised within a reasonable time. Such is the rule laid down in *Stewart v. Lehigh Valley Ry. Co.*, 38 N. J. Law, page 505, but no such stringent rule applies to contracts made between corporations where the common directors are less than a majority, and where the contracts are approved by a sufficient number of directors not common to both boards.

This question was expressly passed on by the Supreme Court of California in the case of *San Diego v. Pacific Beach Co.*, 112 Cal. 53. In this case the respondent had five directors, and the appellant nine, and at the time the contract was made four of the directors of the appellant were also directors of the respondent. A majority of the directors were also stockholders of both. The contention of the appellant is that because of a common directorate the contract was void and incapable of ratification, etc. The Court says:

"Where two corporations, through their boards of directors, make a contract with each other, the directors who are common to both are not within the rigid rule of the cases which hold that one who acts in a fiduciary capacity

cannot deal with himself in his individual capacity, and that any contract thus made will be declared void without any examination into its fairness, or the benefits derived from it to the *cestui que trust*. Two corporations have the right, within the scope of their chartered powers, to deal with each other; and this right is certainly not destroyed or paralyzed by the fact that some, or a majority, of the directors are common to both. Of course, if such directors should wrongfully and wilfully use their powers to the prejudice of one of the corporations, their action, if not acquiesced in, and contested at the proper time, could be avoided, as in any other case of actual fraud. But such common directors owe the same fidelity to both corporations, and *there is no presumption that they will deal unfairly with either*; therefore, their acts as such common directors are not void. There are abundance of authorities to this proposition, but it is hardly necessary to refer to any other than that of *Pauly v. Pauly*, 107 Cal. 8; 48 Am. St. Rep. 98, and the cases there cited."

Again, in *Reclamation Dist. No. 70 v. Birks*, 113 Pac. 171, the same Court said:

"No presumption of illegality or unfairness attaches merely from the fact that Messrs. Tarke and Summy were trustees of both districts and that these districts had, or proposed to have, business dealings with each other through their boards of trustees. No such presumption arises merely because two corporations which have certain directors in common deal with each other."

In an extended note to the case first cited, L. R. A. book 33, page 788, the author says:

"The doctrine of the main case of *San Diego, Old Town & Pacific Beach R. Co. v. Pacific*

Beach Co., has not been uniformly adopted by the courts, but may be now said to be fully established in most jurisdictions."

And again, on page 796 of this note, we read as follows:

"But in the majority of cases holding that such contracts may be valid the presumption is one of fact, and favors the fairness of the transaction until there is a showing of circumstances that indicate the contrary. On this point also the main case of San Diego, Old Town & Pacific Beach Ry. Co. *v.* Pacific Beach Co. is in harmony with the majority of the decisions."

See also:

Union Pacific Ry. Co. *v.* Credit Mobilier,
135 Mass. 367, 377;

Flag *v.* Manhattan Ry. Co., 10 Fed. 413,
433;

Leathers *v.* Janney, 41 La. Ann. 1120;

Davis *v.* United States Elec. Power & L.
Co., 77 Md. 35;

Booth *v.* Robison, 55 Md. 419;

Adams Mining Co. *v.* Senter, 26 Mich. 73.

Whatever contrariety may be found in the decisions in reference to where rests the burden of proof where there is a majority of common directors, we think no substantial conflict may be found where there is less than a majority of such common directors, or where the vote of the common directors is unnecessary to the execution of the contract.

There is a clear distinction between the two cases.
See:

U. S. Rolling Stock *v.* Atlantic R. Co., 34
Ohio St. 450;

Leavenworth Co. *v.* Chicago R. Co., 134
U. S. 688;

Evansville Public Hall Co. *v.* Bank, 42
N. E. 1097;

Hiles *v.* Hiles & Co., 120 Ill. App. 617;

Thompson on Corp., Sec. 1241.

Notwithstanding the findings of both the District Court and Court of Appeals, that the price paid for the Alice properties was inadequate, or rather that the defendant had failed to sustain the burden of showing that it was adequate, we feel justified, in view of the erroneous rule of law invoked by both courts upon this question, in directing the Court's attention to the proof upon this point and insisting that there is no substantial basis for a conclusion that the sale was not fair and the price adequate.

The consideration paid for Alice property is found by the Court to have been \$1,500,000, together with the assumption of certain liabilities of the Alice Company. This was a figure largely in excess of the then, or now, known value of the Alice property, and could only be justified on the basis of speculative value which the property might possess to the Anaconda Copper Mining Company, a value which could only be determined by a corporation strong enough to carry the burden of equipping, exploiting and developing the ground in the hope of encountering paying ore bodies, and strong enough to incur the speculative risk of the

investment, and so favorably situated that it could carry on explorations at the least possible expense.

Subdivisions 3 and 4 of statement, *supra*, contain a critical analysis of the testimony touching value of the Alice property and the condition of the Alice Company. The same is incorporated herein by reference and the attention of the Court invited thereto.

Therein it is clearly demonstrated that the Court gave undue prominence in its conclusions as to the adequacy of consideration to the estimates of value by Weed and Corry, and it is further demonstrated that these estimates were wholly incompetent and ought not to have been considered by the Court in any respect; and when these estimates are disregarded, as they should be, the undisputed testimony in the case leads the mind of a candid investigator irresistibly to the conclusion that the consideration paid for Alice was full, fair and adequate.

From this analysis, and from the record itself, it appears that under conditions existing in 1910, and for many years prior thereto, and at the time of the trial of this suit, the Alice properties contained no known ores of any value whatsoever; that for many years the property had been practically abandoned; that base ores remain in the workings of the mine, altogether refractory, carrying silver and zinc, which, notwithstanding the great progress made in the art of metallurgy, remain still unworkable. Although Alice was controlled by wealthy interests, which had kept continuous possession of the property, and had assiduously investigated the question of the reduction of these ores, no profitable method of their reduction had been discovered, and very recent and extensive investi-

gations had proven them wholly refractory to any known processes.

The most successful experimentations for the reduction of zinc ores in the Butte Camp had been carried on by Mr. Bruce, who, after five years and at great expense, adapted a process to the reduction of the zinc ores of the Butte & Superior and Elm Orlu, these ores being much less refractory than the Alice ores. The record shows that Bruce was unable to devise a method to successfully treat the Alice ores, and that even the high samples introduced into the record by Mr. Walker, the same being altogether hearsay, and the high values referred to in the Buzzo letters, also being hearsay, Mr. Bruce stated at the time of the transaction in question such ores could not be profitably handled, and even at the time of the trial such ores had only a slight value.

The analysis of the testimony, heretofore referred to and the record, shows that the Alice property could only be developed at an enormous expense, and that even a 500-ton stamp mill to treat Alice ores would cost more than \$500,000, and the expense for the development of these properties would be much greater to any other purchaser than to the Anaconda Company, its favorable situation in relation to the property being advantageous to it; that the value of the Alice ores was altogether speculative and depended upon future indeterminate progress in the metallurgical art; that the discovery of copper ores in the Alice properties was only a remote possibility, and that the amount of development work necessary to demonstrate the presence of such ores could not even be approximately estimated; that notwithstanding ten miles of underground workings and fifteen hundred feet

in depth, no copper of value had been discovered therein; that the Rainbow Lode is indistinctively silver-bearing district; that the only hope of finding any copper in the Alice would be in certain northwest and southeast veins which, under the testimony, may or may not penetrate Alice ground, and that as these veins have been developed and worked in the direction of the Alice property they have become absolutely barren of copper ores; that the estimates of Weed and Corry are based upon hearsay and incompetent testimony, and knowledge, and ought to have been discarded; that these estimates are altogether speculative and should not have been used as the basis for determining the question at issue, and that the Court should, from the details of the evidence, have decided as to the reasonableness of the consideration for the Alice property.

Said analysis and the record further show that during the entire period of the Company's operations after 1898 the stock of the Company had practically no value; that a few years prior to purchase by Anaconda the controlling interests of Alice property optioned a majority of the stock of that Company at the rate of One Dollar and Fifty Cents per share, or Six Hundred Thousand Dollars for the entire property, and that such stock was thereafter acquired by the Butte Coalition Company at that rate; that following that purchase, and during the period from 1906 to 1910, there had been no particular development adding to its value and no change in its condition; and yet it is now contended that in the year 1910 the value of the stock of the Alice Company had increased to such extent that Three Dollars and Seventy-five cents per share was wholly inadequate.

Strongly persuasive, if not conclusive, upon this question of value are the proceedings in reference to the Alice property in pursuance of the interlocutory decree. It is a matter of common knowledge of which notice will be taken that the mining situation in the United States was never better than at the time when the Alice property was offered for sale at public auction in the city of Butte in pursuance of the interlocutory decree of the court below. The price of copper had advanced far beyond what it was in 1910, and the products of zinc ores were commanding a price theretofore wholly unknown in the history of the mining industry. The utmost publicity in financial circles of the United States was given to the sale. Notwithstanding this, no purchaser could be found who would bid for the property a price in excess of that paid by the Anaconda Company in the year 1910.

The learned judge below, before entering final decree, should have considered this transaction as evidence touching the adequacy of the consideration paid for Alice, and this court not only may, but should, consider the same in determining whether or not the consideration for Alice was in all respects adequate.

Blythe v. Hinckley, 84 Fed. 234;

Celluloid Mfg. Co. v. Cellonite Mfg. Co.,
40 Fed 476;

*Northwest Trans. Co. v. Boston Marine
Ins. Co.*, 41 Fed. 796;

Street, Federal Equity Practice, Vol. 2,
Sec. 1918;

N. K. Fairbank Co. v. Windsor, 124 Fed.
202;

Roemer v. Neumann, 26 Fed. 333;

Deitch v. Staub, 115 Fed. 317.

VI.

The subsequent ratification of the contract of sale by the stockholders of the Alice Company renders the question of common directors immaterial.

The deed from the Alice Company to the Anaconda Company does not stand upon the act of the directors of either corporation. Of the seven directors of the Anaconda Company, one was a director of the Alice Company, and of the seven directors of the Coalition Company, two were directors of the Anaconda Company, but if any question existed as to the validity of this contract on account of the common directors of both companies, such a controversy is entirely disposed of by the proposition that the action of the respective boards of directors, and the contract which they entered into, was subsequently expressly ratified by the stockholders of both corporations. Even where a director deals personally with a corporation, and obtains an advantage, pecuniary or otherwise, in so doing, if the contract or action is subsequently ratified by the stockholders of the Company, it is a valid, binding obligation, and not even voidable.

Metropolitan Telephone Co., etc., v. The Domestic Telegraph etc., Co., 44 N. J. Equity, 568;

Cook on Corporations, 6th Ed., 658.

Even though both companies had had a common directorate instead of only a small minority of common directors, this question would remain unimportant, because the action of the directors of

the Alice Company was ratified and approved by, and made the act of, the stockholders. Under the law, if the directors were not disposed to act after the proceedings taken by the stockholders, their action could have been coerced.

VII.

The sale of the Alice property was wise and also advantageous to the Alice Company.

Appellants inquire why the Alice property should have been sold at the time it was sold. This question is answered by a moment's attention to the story of the Alice Company and the condition of its property and its financial situation. What reason was there that Alice should not sell? It obtained an opportunity to sell the Alice property for a fair price, something it had never had a chance to do during the entire history of its existence, during seventeen years of unprofitableness and idleness, and an opportunity which, if not accepted, would probably not occur again for another seventeen years or more. Measured by the selling price, more than a million and a half dollars belonging to the Alice Company had been, for over seventeen years, tied up in this unprofitable investment, yielding not a cent of revenue to its owners. It promised to remain so for an indefinite period. During that seventeen years no purchaser had been found for the property, and no syndicate or corporation who would take a lease and bond upon the same. Its ultimate value depended upon the intellectual processes of some metallurgist yet un-

known, and upon the remote probability that such metallurgist, some time in the indefinite future, might outstrip the present known knowledge of his art and develop a process making such ores valuable.

Development of the property would require, according to Weed and Corry, an expenditure of Two Million Dollars or better. Alice had no value upon which to base the borrowing of this money. The stock was not assessable, and the gentlemen who complain so bitterly now in reference to this trade with the Anaconda Company did not seem inclined to trust Alice for sufficient funds to carry out this development; and well they might be wary of such an adventure, for it might very reasonably be predicted that not only would the money be lost but Alice would also be stripped of all speculative value.

By the sale, Alice acquired property of the value of a million and a half dollars; property which, if converted into cash, which might readily have been done, and properly invested, would bring to Alice stockholders, either collectively or individually, a greater return each year than had ever been received, save and except during one year pending the existence of the Alice Company. Will Appellants please tell us why Alice should not have sold its property?

The wisdom of the sale is not only demonstrated by what is herein stated, and what has been disclosed in this brief and the record, in reference to the value and condition of the Alice property and of the Alice Company, but subsequent events after the year 1910 add confirmation to the wisdom of this transaction. Five years after this trade was accomplished, Alice still remains unproductive and

in the same condition as before, and five years thereafter, at public auction, duly and properly advertised, during a period of prosperity unexcelled so far as the mining industry is concerned, no bidder could be found who would offer in excess of a million and a half dollars for all the property of the Alice Company.

Appellants also inquire why the property was not leased and bonded. It does not appear that any opportunity was ever presented to lease and bond the property advantageously, or that any syndicate or association could be found willing to expend the necessary sums of money to develop the Alice property upon the chance of making it profitable; and it is certainly clear that it would have been inadvisable to take the gamble of a lease and bond upon the property when full, fair and adequate consideration was offered in property which was equivalent to cash. To this query we might reply—why did not the complainants in this case, during the seventeen years of idleness of the Alice property, lease and bond this property to some syndicate or association able and willing to undertake the enterprise?

The answer is evident in both instances. It simply could not be done upon a basis advantageous to the Alice Company.

Certainly the Alice Company and its stockholders were most fortunate in being able to dispose of such a property in 1910 for thirty thousand shares of the capital stock of the Anaconda Company, having a market value of one and one-half million dollars, paying regular dividends of Three dollars per share per year, and having property, in addition to that of the Alice, with a speculative value almost unmeasurable; and certainly the stockholders

of that Company displayed consummate wisdom in accepting the opportunity to convert a dead investment into a profitable and income-bearing one. If this sale had not been made the evidence shows the stockholders of the Alice Company would have, during a period of less than four years, the time between the date of the sale and the trial of this suit, been deprived of Three Hundred Thousand Dollars in dividends paid by the Anaconda Company.

But Appellants say that Weed and Corry have testified that it was not an opportune time to sell the Alice property, that the officers should have waited. Should have waited for how long? The stockholders had been waiting since the year 1898, anxiously expectant, hoping that something could be done with the property. Experiments upon the ores of other properties could not afford relief to the Alice, for the results of these experiments threw no light upon the problem of the Alice ores because of their difference in character. If the management of the Alice Company had not accepted the opportunity offered it by the proposition of the Anaconda Company in 1910, its officers and all others participating in such refusal would have been subject to most severe condemnation by the stockholders.

In determining the question of reasonable value of the Alice property, the question as to whether the transaction was an advantageous one to the Alice Company and its stockholders, and in determining the ultimate question as to whether the transaction ought to have been by the Court conditionally set aside, we submit that the Court should carefully consider the fact that the transaction is opposed by the holders of less than four

per cent. of the capital stock of the Alice Company, and that it has been approved and decided to be to their best interests by the recorded approval of the holders of more than seventy-two per cent. of the stock, and is presumably approved and desired by the holders of more than ninety-six per cent. of the stock, and in this connection, as laid down by the Court in the Bowditch case, 82 Atlantic 1014, *supra*, this Court should bear in mind that to set aside this transaction is to say that at the instance of the holders of less than one-twenty-fifth of the stock, the holders of the other twenty-four twenty-fifths shall not be permitted to exchange their Alice stock, of doubtful value and non-earning power, for their proportion of the Anaconda stock, having large present value, at least fair earning power, and speculative value difficult to estimate. But while this feature of the case may not be controlling, certainly in determining the question of reasonable consideration and of whether the transaction was an advantageous one to the Alice Company, the judgment of the men holding its stock must be of great assistance, and the judgment of Mr. Ryan, of whom the Court in its opinion said:

“ * * * there is nothing to inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust,”

must be most persuasive.

At the stockholders' meeting, outside of the stock in which the Coalition Company was interested, the record shows that 122 individual holders directly approved of the transaction. Each of these stockholders presumably knew more or less of the Alice property and its condition, and had opinions

as to the value of their stock. Thus, we have the decisions upon this question of value and advantage of more than 122 individual stockholders who openly recorded their approval, in addition to the many holders of the remaining twenty-four per cent. of the stock who have indicated their approval by assenting to and not objecting to the transaction, and certainly the judgment of all of these individuals upon a matter in which they were directly interested must be of great effect upon any decision as to the questions before this Court. In addition, of course, we must presume from the record the approval of the transaction by the 3500 individual stockholders in the Coalition Company, who, in proportion to their stockholdings, were interested in the assets of the Alice Company.

VIII.

No officer of the Alice Company concealed any material facts from the Alice stockholders.

The question as to whether Mr. Ryan, or any other officers of the Alice Company, or even of the Anaconda Company (although certainly the Anaconda Company or any of its officers, as such, owed no duty of enlightening the Alice Company or its stockholders), did or did not lay before the Alice Company all of the facts within their knowledge as to the Alice or other ground in the Butte district, is clearly immaterial, as there is no stockholder before the court complaining that he gave his consent to the sale to the Anaconda Company because

of any misstatement concerning, or lack of knowledge of, any material fact. None of the complainants voted in favor of the transaction, and none of the other stockholders, who together owned more than 96 per cent. of the stock of the Company are complaining of the transaction. However this may be, there is positively no evidence in the record from which it may be found that Mr. Ryan or any of the directors of the Alice Company concealed any material fact from the stockholders of that Company. The condition of its properties and their development were matters of general public knowledge, and were shown by the records kept in the Company's office. Indeed, among the complainants in this case were stockholders of that Company, whose knowledge of its value, and opportunities for knowledge of its value, were far superior to any possible knowledge which Mr. Ryan could have had, since they were actively concerned with the operation of the property before and at the time it was closed down, and before it was filled with water to the 700-foot level.

Moreover, all the records of the Company showing previous operations and results were on file in the office of the Company. No development of any kind had been made since the operations ceased in the early 90's. The records of such sampling of the ore as had been done since the taking over of its stock interest by the Coalition Company, were matters of record in the office of the Company at Butte and open to any stockholder, but results of this sampling were so discouraging that they added nothing tending to increase the value of the property.

So far as developments made by the Anaconda Company in adjacent mines, the evidence clearly

shows that these developments, prior to 1910, the date of the sale, so far as they had any bearing whatever on the value of the Alice properties, were unfavorable, and the evidence of Corry and Weed shows that the facts of general and common knowledge in the Butte district concerning the operations of the Anaconda Company and other companies in the Northwestern part of the Butte camp would tend to give any Alice stockholder or other person a much more favorable opinion than the developments and conditions themselves would justify. There is no basis for the conclusion of the Court of Appeals, based upon the testimony of Mr. Ryan, that he concealed from Alice stockholders any material fact whatever, and there is no evidence in the record of any kind or character wherein any of the complainants assert or claim that any material fact touching the value of the Alice properties, known to Mr. Ryan, was unknown to them or either of them. Mr. Ryan testifies that in fixing the value of the Alice properties Mr. Carson and Mr. Thornton, directors of the Alice Company, altogether disinterested, had the controlling voice, and that they were mining engineers and familiar with the condition of the Alice. He also says that Professor Kemp, Mr. Keller and Mr. Klepetko, a committee of eminent engineers employed generally to appraise the properties in the Butte camp, which had theretofore been purchased by the Anaconda Company, did not make any report bearing particularly on the Alice property. Their duties related to operating mines, and it was impossible in the case of the Alice as there was no plant and the mine was inaccessible on account of being filled with water to the 700-foot level, and also says that so far as the Alice Company was concerned there was no

written report from any engineer on the property preparatory to the sale. Mr. Ryan declares in his testimony that the circulars to the stockholders issued by the directors was all the information the directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection of the offer of the Anaconda Company to buy the Alice property.

It does not appear in the evidence that the Jessie vein, mentioned by Mr. Ryan in his testimony, passed into or through the Alice ground. It does not appear that Professor Kemp, Keller or Klepetko communicated any material fact to Mr. Ryan that was theretofore unknown to the stockholders of the Alice Company. It does not appear that Mr. Buzzo, whose general talk with Mr. Ryan is referred to in Mr. Ryan's testimony, communicated to Mr. Ryan any material fact concerning these properties that was unknown to the complaining stockholders,—in fact, Mr. Buzzo had for many years prior to the acquisition of any of the stock of the Alice Company by Mr. Ryan, and thereafter, been in the employ of the Alice Company.

The District Court found that there had been no concealment upon the part of Mr. Ryan. In its opinion (Tr., Vol. 1, p. 185), it said:

"Ryan knew less of Alice than was known to its stockholders from inspection and reports. He had not seen its flooded depths, but to one of plaintiffs they were familiar."

The only concealment of facts shown by the record was on the part of Mr. J. R. Walker, one of the complainants, who testified to the apparently favorable gross value of ores which had been shipped by Mr. Buzzo and treated in Utah, and upon

which he based his idea of the value of the property, placing it in excess of ten million dollars. He stated that he had placed the returns and written data concerning these ores and their values in the pigeon holes in an office in Salt Lake, and had never communicated these facts to Mr. Ryan or any other officer of the Company.

All of the Alice stockholders had full knowledge, or full means of knowledge, of all the facts regarding the Alice Company and its property at the time of the transaction with the Anaconda Company. The condition of the property and its value was not unfairly pictured to them in the circular sent them by the officers of the Company, preliminary to the stockholders' meeting held in May, 1910.

IX.

Under the circumstances of this case the conveyance in question is not affected by the fact that the consideration paid therefor was capital stock of the Anaconda Company.

A great portion of Appellants' brief is devoted to a discussion of the question as to whether or not Alice had authority to accept stock of the Anaconda Company in payment for its physical properties, and in order to justify a discussion of this question it is assumed, contrary to the record and contrary to any evidence in this case, that Alice either accepted this stock with the intention of holding the same permanently as an investment, or

that it accepted the same with the intention subsequently, upon the dissolution of the Company, to compel each individual stockholder to exchange his Alice stock for stock of the Anaconda Company.

Neither of these assumptions finds any substantial basis in the record, but on the contrary it clearly appears that it was the intention of the officers of the Alice Company to accept this stock in payment for the Alice properties as a step in the liquidation of the affairs of the Alice Company; and it further appears that before the complainants brought this suit, proper and legal steps had been taken by the Alice Company, through its directors and stockholders, authorizing the dissolution of that Company and the distribution of its assets to the various stockholders.

There is nothing disclosed in any of these proceedings that tends to indicate that it was the purpose of the Alice Company to compel the stockholders of the Company to take Anaconda stock in kind, and the presumption undoubtedly is that the dissolution of the Company so authorized would be carried out according to the laws of the State of Utah; and if such laws required either the sale of the entire stock of the Anaconda Company, held by the Alice Company, or the distribution in kind to those stockholders, who were willing to accept the same, and the sale of the remaining stock and the distribution of the proceeds thereof to those stockholders preferring the proceeds of the sale of the stock to the stock itself, that necessary proceedings therefor would have been completed by the Alice Company had not the complainants in this cause interposed an objection and instituted legal proceedings to prevent the Alice Company from

doing the very thing which they now say the Alice Company should have done.

Complainants say that there is no express power delegated to a corporation by the laws of the State of Utah to own or possess the stock of any corporation; therefore this transaction is *ultra vires* and should be set aside as being against public policy.

It is true that there was no statute that authorized expressly a corporation to acquire the stock of another corporation. The public policy of any state need not be indicated by an express statute giving the right, but may be shown by implication from legislative acts. The Statute of Utah, Section 344, of the Compiled Laws of Utah of 1907, allowing the consolidation of corporations, is, however, strongly persuasive as indicating the public policy of Utah in that respect; and as was decided in the case of *MacGinniss v. Boston and Montana Company*, where, under a statute of the State of Montana similar corporations organized under the state laws are permitted to consolidate, it is indicative of the fact that there is no public policy contrary to permitting a foreign corporation to exercise this power.

In speaking of the persuasive effect of the statute in Montana, the Court says (29 Montana, 428, at p. 458) :

"It is therefore not against the public policy of the state for one corporation to hold and vote stock in another of like character. The provisions of the statutes *supra* are to be construed as amendments to the general laws authorizing the formation of corporations and defining their powers, within the purview of Section II of Article 15 of the Constitution, *supra*. The public policy of the state varies from time to time. It is not to be measured by

the private convictions or notions of the persons who happen to be exercising functions, but by reference to the enactments of the law-making power, and in the absence of them, to the decisions of the courts. When, however, the legislature has spoken upon a particular subject and within the limits of its constitutional powers, its utterance is the public policy of the state.

"The Constitution does not prohibit consolidation. Its prohibition extends only to any device by which an attempt is made to deprive the state courts of jurisdiction. Section 527 of the Civil Code expressly authorizes consolidations of domestic corporations. House Bill 132, *supra*, impliedly authorizes them between domestic and foreign corporations, or, at least, goes to the extent of empowering one domestic corporation to hold stock in another of a similar character."

The Court, therefore, upon that and other grounds, determined that it was not against the public policy of the state to permit the stock of one corporation to be owned by another of similar character.

So, too, it might be urged that the Constitution of the State of Utah does not prohibit the consolidation of corporations or the holding of stock by one corporation in another corporation. Its prohibitions in this respect are limited to prohibiting railroad corporations from consolidating the stock, property or franchises with any other corporation. See:

Section 13, Article 12, Constitution of the State of Utah.

It is not necessary in this case, however, to contend, neither is it necessary to sustain the position

of the defendants to contend, that authority exists in the Alice to acquire, own, possess and hold indefinitely, and as a permanent investment, the stock of any other corporation. One of the principles upon which this transaction is justified is that notwithstanding the most stringent limitations against a corporation exercising the power of holding stock in another corporation, still such a corporation is permitted by law to acquire and hold the stock of another corporation when such requirement and holding of stock is not intended to be of a permanent nature, but is temporary in character, and is done for the purpose of turning unprofitable assets of a corporation into liquid assets, and as a step leading towards the dissolution of the Company, and when it is the intention of the corporation either to distribute the stock or the cash obtained from a sale thereof upon dissolution proceedings regularly carried out, or where it is intended to sell or otherwise dispose of such stock.

Section 4064 of Thompson on Corporations, lays down the rule as follows:

"There are still other exceptions to the general rule prohibiting a corporation from taking stock in another corporation, it has long been recognized to be within the power of a corporation to sell its products to another corporation, and, under some circumstances, to sell all of its property to another corporation, and take the stock of the latter in payment or in part payment of the property so sold. This power has been recognized especially in cases where corporations were heavily indebted and such a transaction was the only apparent means of liquidating the indebtedness. Thus in a Rhode Island case, directors of a corporation were held to be justified in disposing of an unsalable factory on which existed a heavy indebtedness,

and taking in part payment therefor the stock of another corporation. These principles are supported by other decisions. The delivery of the certificates of stock under a contract of sale of property to be paid in stock, was held to operate as a discharge for the price".

See also:

Thompson on Corporations, Secs. 4063, 4065 and 4066.

The rule is thus stated in Clark & Marshall on corporations, page 531, as follows:

"There is no reason, however, why a corporation which has the power to dispose of property should not be allowed, in the absence of express prohibition, to sell it for stock in another corporation, provided the transaction is for the *bona fide* purpose of advantageously disposing of the property, and the stock is taken with a view of selling it and converting it into money."

In *Hodges v. New England Screw Co.*, 53 American Decisions, page 624, a case was presented somewhat similar to the present one, where a corporation in failing circumstances undertook to convey all of its property, and receive in payment the stock of another corporation. The Court says:

"There are large classes of corporations in Rhode island and the other states, which may and do rightfully invest their capital in the stock of other corporations; such, for instance, as religious and charitable corporations; and corporations for literary and scientific purposes. So insurance companies may rightfully invest their capital in the stock of other corporations, such as banks and railroads, and the like. Nor have we any doubt that the screw company might have rightfully taken this stock in the iron company, in payment for

their rolling-mill, if it had been taken with a view to sell again and not permanently to hold it."

This principle was expressly recognized in the case of *McCutcheon v. Merz Capsule Co.*, as decided by the Circuit Court of Appeals in the Sixth Circuit, Justices Taft and Hammond concurring with Justice Lurton, 71 Federal Rep., 787, although the Court held that the facts did not, in the particular case, bring the corporation within the exception to the general rule. Said the Court:

"The general rule is that, without express authority, a corporation cannot invest its funds in the stock of another corporation (citing authorities). To this rule there are certain exceptions, due in part to strong implication from the powers expressly granted, or to the objects and purposes for which stock has been acquired. Thus under the rule that the implied powers of a corporation are only such as are necessary to the exercise of its corporate franchises, it has been held that where a debt was collected in the stock of another company, it was a valid transaction, under the implied authority to collect its debts in the most efficient way (citing cases). So, in *Treadwell v. Manufacturing Co.*, 7 Gray, 393, 405, it was held that, for the purpose of retiring from business, it was competent for a manufacturing corporation to sell the whole property of the corporation, taking payment in the shares of a new corporation, to be distributed among the stockholders of the old company. * * * That the facts of this case do not bring it within any well-recognized exception to the general rule inhibiting such investments is to us a most obvious proposition."

In *Byrne v. Schuyler Electric Mfg. Co.*, 65 Conn., page 348, the doctrine is also recognized, where the Court says:

"Nor do the cases cited deny that a corporation, under some circumstances, might expend its whole capital in the purchase of the stock of another corporation; as if such purchase was made for the purpose of selling the stock, and not permanently to hold it. That is what was said to be lawful in *Hodges v. New England Screw Co.*, 1 R. L., 347. So, too, if such a purchase was made by a corporation in embarrassed circumstances, as the most advantageous way of closing its affairs, paying its debts and settling with its stockholders, it would be legitimate. This was what was done, and decided to be proper, in the *Treadwell* case."

In conclusion, after a review of the authorities, the Court says:

"It may be stated as a general rule we think, subject possibly to some exceptions, that a corporation may not become a stockholder in another corporation for the purpose of holding the stock permanently, unless expressly authorized to do so. A solvent corporation may buy and sell the stock of another corporation, if done in the usual course of business, and may become the owner of such stock if taken in payment for debts; but an insolvent corporation may take the stock of another corporation only for the purpose of closing up its business, to be divided in kind, or to be converted into money and divided among its creditors and shareholders."

See also:

- Holmes & Gregg Mfg. Co. v. Holmes & Co.*,
127 N. Y. 252;
- Metcalf v. American School, etc., Co.*, 122
Fed. 115;
- Treadwell v. Salisbury Mfg. Co.*, 7 Gray,
393.

That a national bank may take the stock of any corporation not for the purpose of dealing in stocks, but when it is necessary to hold the same temporarily, as for the satisfaction of a debt, see 92 U. S., page 122.

In this case, as shown by the evidence, not only was it the intention of the directors of the Alice Company, if authorized by the stockholders, to bring about the dissolution of the company and the distribution of its assets, but there has been introduced by the complainants a copy of the minutes of a meeting held by the stockholders at which proceedings were regularly taken for the submission of the proposition to the stockholders to dissolve the company, and such proposition was carried by a vote of practically three-fourths of the stockholders of the corporation. Under the laws of Utah such dissolution may be authorized by a vote of two-thirds of the stockholders. It is alleged in the bill and disclosed by the evidence, that thereafter, in accordance with the Utah statutes, such proceedings were instituted in the District Court of Salt Lake County, Utah, as would have resulted in a decree of dissolution having been entered had it not been for the litigation instituted by the complainants in this action. These facts demonstrate the intention of the officers of the Alice Company to dissolve it and not to convert it, as suggested by complainants' counsel, into a mere stockholding corporation. Moreover, they cure any vice which might have existed in its original acquisition, and remove any cause for complaint which dissenting stockholders might otherwise have.

Mr. Kelley testified that before the institution of the corporate proceedings which resulted in the transfer to the Anaconda Company, it was determined by the directors of the Company, if the

transaction with the Anaconda Company should be authorized by the stockholders, to thereafter proceed to dissolve the corporation and to liquidate its assets and divide them among the stockholders. It is expressly shown by Mr. Kelley's testimony that it was not the intention to force any of the Anaconda stock upon any stockholder who did not desire to take the same, but in such case the stock would be sold and the proceeds turned over to such objecting stockholder. The strongest corroborating evidence that could be offered as showing that Mr. Kelley truly stated the purpose of the officers of the company is shown by the fact that long before the commencement of this action, and after the property had been conveyed to the Anaconda Company, so that the Alice Company was in a condition to be dissolved and its assets distributed, the necessary stockholders meeting was held and statutory proceedings instituted to accomplish such dissolution in compliance with the laws of Utah.

But counsel argue that because of the fact that the circular letter to the stockholders accompanying the notice of the stockholders' meeting of May 27, 1910, at which the sale was authorized, did not also lay before the stockholders for consideration at that meeting the question of dissolution and did not state the plan of the directors as to the dissolution of the company, that such failure is strongly persuasive of their contention that no dissolution was intended. Until the stockholders at their meeting should consider and ratify the transaction with the Anaconda Company, and until the property had been conveyed, and the assets of the Alice Company were in condition to be distributed or liquidated, the meeting authorizing the dissolution could not properly be called or held, and until the sale of the property had been consum-

mated and the Alice put in a condition for dissolution, such meeting would have been premature.

Counsel further argue that because this circular spoke in encouraging terms of the value of the Anaconda stock, which would be received in exchange, is an indication that it was the intention to have the stock held by the Alice Company as a permanent investment.

Whether an Alice stockholder upon subsequent dissolution should elect to take his proportion of the Anaconda stock, or should insist upon having it sold upon the market so that he might receive the proceeds, it certainly was of interest to him that the stock was of large value. Nothing in this language justifies the inference that it indicated an intention to permanently keep this stock in the Alice treasury. What purpose could there have been in the minds of the Alice directors in planning to subject the Alice stockholders to the expense and trouble of keeping such corporation alive merely to hold the Anaconda stock, when each stockholder could as well control his proportion or receive the proceeds thereof. Again, as shown by Mr. Kelley's testimony, the keeping alive of the Alice Company would have also prevented the dissolution of the Butte Coalition Company. The Court certainly cannot believe that the Alice directors had decided to keep the Anaconda stock in the Alice treasury, and thus entail the expense and trouble of keeping in existence these two large corporations.

Counsel further criticize the evidence of Mr. Kelley regarding the intention of the Alice officers by stating that his conferences were merely with the directors as individuals, and that no official action was shown to have been taken towards declaring the intention of the directors to dissolve the Alice Company prior to the stockholders' meet-

ing authorizing the same. As shown above, the matter was not in condition for action by the Alice board of directors until after the Anaconda transaction had been ratified by the stockholders, and when it came time to act, the board met and caused the proper proceedings to be instituted for the dissolution of the company.

Under the facts in this case, it is immaterial whether any technical corporate action was taken by the directors of the Alice Company declaring intention to dissolve the Alice Company. Such intention is clearly disclosed, and before the suit of the complainants, proper corporate action upon the part of the stockholders and directors had been taken to effectuate this purpose. This purpose would have been effectuated, the corporation legally dissolved and its assets legally distributed to its stockholders were it not that these complainants instituted legal proceedings preventing the Alice Company from carrying out and accomplishing the very things which they now assert should have been carried out and accomplished by it in order to render the acquisition of the stock of the Anaconda Company by it a legal transaction.

Certainly this sale may not be rescinded upon the ground that Alice had no power to acquire Anaconda stock as a permanent investment, when it is manifest that its corporate officers had no such intention, and when, prior to the institution of this suit, legal steps had and were being taken to dissolve the Company and dispose of such stock, which would have been fully accomplished but for the intervention of the complainants. They may not claim a rescission on the ground that the Alice has not done the things which it ought to have done, when in fact the accomplishment of the same was alone prevented by their own conduct.

X.

The contract of sale having been fully executed, the contention that Alice Company had no power to transfer for capital stock cannot now be urged by a stockholder of Alice in behalf of that corporation.

If it be conceded, as it must be, that the Alice Company had power to sell its property to the Anaconda Company, and that under certain conditions it had a right to accept the capital stock of the Anaconda Company in payment therefor, the contract, after the same has been fully executed, the consideration paid and the property transferred, cannot be rescinded upon the suggestion of a dissenting stockholder of the Alice Company. If it was the purpose at the time of the making of the contract of sale to dissolve the Alice Company, upon the transaction being completed, to liquidate its assets and divide them amongst the stockholders, the Alice Company had a right to transfer for the capital stock of another corporation; and the subsequent conduct of the Alice Company cannot deprive the Anaconda Company of the benefit of the transaction. This being true, it is equally plain that the Anaconda Company, as purchaser, after the completion of the transaction, had no power to control the Alice Company in its disposition of the proceeds of the sale, and was not concerned with the disposition to be made of the stock by that Company. It is very true that the Anaconda Company was bound to take notice of the charter and statutory powers of the Alice Company; it is equally true that it was not bound to inquire further. Un-

der the statute and the charter, and under the financial condition of the Alice Company, it having power to transfer its property, and under the law having power, under certain circumstances, to transfer it for stock the Anaconda Company was not bound to inquire what were the plans of the Alice Company or its officers with reference to the disposition of that stock, and is not to be held culpable because the Alice Company might fail to dispose of said stock in a proper and legal manner. On the contrary, there being a legal method by which the Alice Company could acquire and dispose of the stock,—that is, by dissolution and liquidation, the presumption was that it would follow that lawful path. It certainly was not *ultra vires* for the Alice Company, under certain conditions, to sell its property for stock. There being a plain legal course which the Alice Company could have followed by selling its property and taking in exchange for the same the capital stock of the Anaconda Company, the transaction thus far was clearly *intra vires*, and certainly because the Alice Company did not follow, or did not intend to follow the law in its subsequent conduct, the sale cannot, for that reason, be now rescinded. Much less can it be rescinded upon the suit of dissenting stockholders of the Alice Company who, by their conduct, have prevented the Alice Company from making legal and proper disposition of the stock received by it and of its assets. It certainly would be a very strange rule of law, and one unrecognized by the authorities, to permit a dissenting stockholder of the Alice to prevent, by legal proceedings, the constituted authorities and stockholders of that Company from converting the Anaconda stock into cash dissolving the Company and distributing the proceeds thereof to the stockholders, and then, after having so prevented the Alice Company from tak-

ing legal corporate action in this regard, impute the wrong of the Alice Company to the Anaconda Company and rescind an executed contract and a sale of property on that account. The contract having been fully executed, the stock transferred to and received by the Alice Company, neither party, nor anyone on behalf of either, can disturb the *statu quo*.

The rule even upon strictly *ultra vires* contracts, where the contract has been fully performed, by payment and a conveyance and transfer, prevents a rescission at the suit of either party, and the corporation would be estopped from questioning it in any manner whatever. In this case, the suit, while brought by minority stockholders, is brought in behalf of, and for the benefit of, the Alice Company, and if the Alice Company could not raise the question as to the transaction being *ultra vires*, because of the consideration being capital stock, the same restriction applies to the action although brought in the name of minority stockholders.

Clark & Marshall on Private Corporations, pages 551, 553, 554;

Metcalf v. American Furniture Co., 122 Fed. 166, 123-124;

Miners Ditch Co. v. Zellerbach, 37 Cal. 543;

Holmes & Griggs Co. v. Metal Co., 24 Am. St. Rep. 452;

Miller v. Fleming & Fox Co., 59 S. W. 512; Santa Cruz v. Wykes, 202 Fed. 372;

R. R. Co. v. Johnson, 58 Kansas, 175; 48 Pac. 847;

Bowman v. Foster & Logan Hdw. Co., 94 Fed. 592;

Fleitmann v. Welsbach Co., 240 U. S. 27, 29.

THE SHERMAN ANTI-TRUST LAW.

I.

The Sherman Anti-Trust Law cannot be invoked by stockholders of a selling corporation to rescind an executed sale upon the ground that the buying corporation exists in contravention of the Sherman Anti-Trust Law.

The District Court impliedly, and the Court of Appeals directly, held that the complainants could not invoke a violation of the Sherman Anti-Trust Law in their behalf. This ruling is undoubtedly correct.

The Sherman Anti-Trust Law provides its own penalties in Sections 4, 5 and 6 as follows:

- (a) A criminal prosecution;
- (b) A suit by the United States, conducted by the District Attorneys and Attorney General to restrain violations of the same;
- (c) The forfeiture of property in transportation;
- (d) A suit at law for treble damages by an individual injured.

The only remedy that may be invoked by an individual injured, whether such individual be a stockholder in a corporation and bring the suit in behalf of such corporation, or is acting upon his own account, is that provided for in Section 7,—a suit for treble damages. Injunctive or equitable relief of any character, for conduct contravening

the Act, must be sought by the United States through its proper officers.

It is clear upon the authorities that such a suit may not be even brought under the circumstances of this case to prevent threatened action, and if such be not so, much less may such a suit be brought to set aside and rescind a completed sale, as is the subject of the present bill of complaint. We believe the multitude of authorities, including the Supreme Court of the United States, sets this matter at rest.

- Wilder Mfg. Co. v. Corn Products Refining Co., 236 U. S. 165; 59 Law Ed. 521;
- Paine Lumber Co. v. Neal, 244 U. S. 459, 471;
- Fleitmann v. Welsbach Co., 240 U. S. 27, 28;
- Corey, *et al.*, v. Independent Ice Co., 207 Fed. 459;
- Metcalf v. American Furniture Co., 122 Fed. 116;
- Gulf C. & S. Ry. Co. v. Miami Co., 86 Fed. 207;
- Pidcock v. Harrington, *et al.*, 64 Fed. 821;
- Ames v. Am. Tel. & Telegraph Co., 166 Fed. 820;
- Greer Mills & Co. v. Stroller, 77 Fed. 2;
- Blindell, *et al.*, v. Hagan, 54 Fed. 41;
- Sou. Ind. Express Co. v. U. S. Express Co., 88 Fed. 660;
- Block v. Standard Distilling & Distributing Co., 95 Fed. 979.

The Metcalf case, *supra*, may be quoted from as illustrative of the rulings made by the other Fed-

eral Courts upon the various circuits. It is directly in point. The case was first considered by the District Court and reported in 108 Fed. 909. Upon demurrer, the demurrer was sustained for multifariousness. Upon amendment of the bill, the case was reconsidered. In the first decision, by implication, it was held that such a suit could be maintained by dissenting stockholders under the Sherman Act, but in this case, that conclusion is expressly overruled and denied.

This was a suit brought by a dissenting stockholder in behalf of his corporation against the grantor and grantee *to compel a reconveyance of property which it was charged had been conveyed by the grantor through the wrongful act of its officers and stockholders to the grantee, for the purpose of monopoly, and in violation of the Sherman Anti-Trust Act.* It is therefore on all fours with the case at bar. On page 126 the Court said:

"I do not understand that it is claimed by complainant that this court has the power to take cognizance of the alleged illegal combination because of the provisions of the Anti-trust act of 1890. It has been many times decided, and no longer admits of any question or doubt, that the only party entitled to maintain a bill in equity for injunctive relief for violating the provisions of the anti-trust act is the United States Attorney, at the instance of the Attorney-General."

If any doubt existed upon these questions, we think the same was removed entirely by the decision of the Supreme Court of the United States in the Wilder Manufacturing Company case, *supra*, decided February 23, 1915, where the subject is very thoroughly discussed by Mr. Chief Justice White, and his conclusions concurred in by the

entire court. Among other things, the Court said (236 U. S. pp. 173-176) :

“* * * In the second place, the proposition is repugnant to the anti-trust act. Beyond question, re-expressing what was ancient or existing, and embodying that which it was deemed wise to newly enact, the anti-trust act was intended in the most comprehensive way to provide against combinations or conspiracies in restraint of trade or commerce, the monopolization of trade or commerce, or attempts to monopolize the same. *Standard Oil Co. v. United States*, 221 U. S. 1; 55 L. Ed. 619, 34 L. R. A. (N. S.) 834, 31 Sup. Ct. Rep. 502, Ann. Cas. 1912 D, 734; *United States v. American Tobacco Co.*, 221 U. S. 106, 55 L. Ed. 663, 31 Sup. Ct. Rep. 632. In other words, founded upon broad conceptions of public policy, the prohibitions of the statute were enacted to prevent not the mere injury to an individual which would arise from the doing of the prohibited acts, but the harm to the general public which would be occasioned by the evils which it was contemplated would be prevented, and hence not only the prohibitions of the statute, but the remedies which it provided, were co-extensive with such conceptions. Thus the statute expressly cast upon the Attorney-General of the United States the responsibility of enforcing its provisions, making it the duty of the district attorneys of the United States in their respective districts, under his authority and direction, to act concerning any violations of the law. And in addition, evidently contemplating that the official unity of initiative which was thus created to give effect to the statute required a like unity of judicial authority, the statute in express terms vested the circuit court of the United States with ‘jurisdiction to prevent and restrain violations of this Act,’ and besides expressly conferred the amplest discretion in such courts to join

such parties as might be deemed necessary, and to exert such remedies as would fully accomplish the purposes intended. Act of July 2, 1890, Chap. 647, 26 Stat. at L. 209, Comp. Stat. 1913, Sec. 8820.

"It is true that there are no words of express exclusion of the right of individuals to act in the enforcement of the statute, or of courts generally to entertain complaints on that subject. But it is evident that such exclusion must be implied for a two-fold reason: First, because of the familiar doctrine that 'where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes'. *Farmers' & M. Nat. Bank v. Dearing*, 91 U. S. 29, 35; 23 L. Ed. 196, 199; *Barnet v. Muncie Nat. Bank*, 98 U. S. 555; 25 L. Ed. 212; *Oates v. First Nat. Bank*, 100 U. S. 239; 25 L. Ed. 580; *Stephens v. Monongahela Nat. Bank*, 111 U. S. 197; 28 L. Ed. 399, 4 Sup. Ct. Rep. 336; *Tennessee Coal, I. & R. Co. v. George*, 233 U. S. 354, 359; 58 L. Ed. 997, 999, L. R. A. 1915; 34 Sup. Ct. Rep. 587; Second, because of the destruction of the powers conferred by the statute, and the frustration of the remedies which it creates, which would obviously result from admitting the right of an individual, as a means of defense to a suit brought against him on his individual and otherwise inherently legal contract, to assert that the corporation or combination suing had no legal existence in contemplation of the anti-trust act. This is apparent since the power given by the statute to the Attorney-General is inconsistent with the existence of the right of an individual to independently act, since the purpose of the statute was where a combination or organization was found to be illegally existing to put an end to such illegal existence for all purposes, and thus protect the whole public,—an object incompatible with the thought that such

a corporation should be treated as legally existing for the purpose of parting with its property by means of a contract of sale, and yet be held to be civilly dead for the purpose of recovering the price of such sale, and then, by a failure to provide against its future exertion of power, be recognized as virtually resurrected and in possession of authority to violate the law. And in a twofold sense these considerations so clearly demonstrate the conflict between the statute and the right now asserted under it as to render it unnecessary to pursue that subject further. In the first place, because they show in addition how completely the right claimed would defeat the jurisdiction conferred by the statute on the courts of the United States,—a jurisdiction evidently given, as we have seen, for the purpose of making the relief to be afforded by a finding of illegal existence as broad as would be the necessities resulting from such finding. In the second place, because the possibility of the wrong to be brought about by allowing the property to be obtained under a contract of sale without enforcing the duty to pay for it, not upon the ground of the illegality of the contract of sale, but of the illegal organization of the seller, additionally points to the causes which may have operated to confine the right to question the legal existence of a corporation or combination to public authority sanctioned by the sense of public responsibility, and not to leave it to individual action, prompted, it may be, by purely selfish motives.

“As, from these considerations, it results not only that there is no support afforded to the proposition that the anti-trust act authorizes the direct or indirect suggestion of the illegal existence of a corporation as a means of defense to a suit brought by such corporation on an otherwise inherently legal and enforceable contract, but, on the contrary, that the provisions of the act add cogency to the principles

of general law on the subject, and therefore make more imperative the duty not directly or indirectly to permit such a defense to a suit to enforce such a contract, we put that subject out of view and come to the only remaining inquiry, the alleged effect of the previous ruling in the Continental Wall Paper case, *supra*."

In discussing this question in this case the Court of Appeals said:

"While the last point mentioned (violation of Federal anti-trust act) has been very ably and elaborately argued by counsel on both sides, we find it unnecessary to consider it for the reason that as we understand the recent decision of the Supreme Court in the case of *Wilder Manufacturing Company vs. Corn Products Refining Company*, 236 U. S. 165, it is not available to the appellants.

"That case involved the construction of the Anti-Trust Act and the effect of a profit-sharing contract of the Refining Company and those dealing with it exclusively, and the right of that corporation to recover for goods sold by it to the Manufacturing Company. The court, in denying the defense interposed by the purchaser based upon the claim that the Refining Company had no legal existence as it was a combination composed of all the manufacturers of glucose or corn syrup in the United States, illegally organized with the object of monopolizing all dealings in such products, in violation of the Anti-Trust Act of Congress, and had further sought to perpetuate its monopoly by devising a certain profit-sharing scheme, based its ruling upon two grounds, the second of which is as follows."

Thereupon, after quoting extensively from the opinion, the Court said:

"So far as the point above alluded to is concerned, the only difference between the case

cited and this is that in that case a private corporation undertook to avoid the payment of money due from it under a contract with another private corporation on the ground that the latter was an illegal monopoly and therefore had not the power to make the contract because of the Anti-Trust Act, while here the contention is that the Copper Company was without power to make a certain purchase from another private corporation because of the same act—which is, in principle, as we conceive, no difference at all” (Tr., Vol. II, pp. 991, 994).

In *Paine Lumber Co. v. Neal*, *supra*, on page 471 of the majority opinion we read as follows:

“In the opinion of a majority of the court if the facts show any violation of the Act of July 2, 1890, c. 647, 26 Stat. 209, a private person cannot maintain a suit for injunction under Sec. 4 of the same (*Minnesota v. Northern Securities Co.*, 194 U. S. 48; 7L, 71), and especially such an injunction as is sought; even if we should go behind what seems to have been the view of both courts below, that no special damage was shown, and reverse their conclusion of fact.”

Even the Clayton Act, passed October 15, 1914, Chapter 223, Section 16, 38 Stat. 730, 737, would not justify the maintenance of a suit for rescission even though applicable, which is not the case. It reaches only to injunctive relief by one threatened with special injury.

In *Fleitmann v. Welsbach Co.*, *supra*, on page 29, this Court said:

“Even the Act of October 15, 1914, c. 323, Sec. 16, 38 Stat. 730, 737, passed since this suit was begun, does not go farther in terms than to give an injunction to private persons against threatened loss.”

Against this array of authorities, there is only the case of *Bigelow v. Calumet, etc., Co.*, which indulges in a serious discussion of the question to the contrary. The decision was principally based upon the case of *Metcalf v. American Furniture Co.*, 108 Federal, 909, which was reconsidered in 122 Federal, 116, and the rule announced to be as we contend, as is shown by the excerpts from said case hereinbefore set out.

If the stockholder or individual may not, when thus injured, maintain a suit for *injunctive* relief, much less may he maintain a suit for other equitable relief, such as that sought in this action.

The gist of this action is the rescission of the sale of the Alice properties to the Anaconda Copper Mining Company, the cancellation of the deeds of conveyance, and reconveyance of the stock and property from one to the other, all of which is equitable in its nature, and comprehends a redress for the violation of the anti-trust law, which does not fall within any of the terms of the remedies provided for therein. The relief here sought is grounded squarely upon the Sherman Anti-Trust Act, and the remedies therein provided, and if it cannot be obtained upon the ground upon which it is sought, it may not be obtained at all.

Thus far we have discussed the question of the right of an individual or stockholder to equitable relief under the Sherman Anti-Trust Law, either before or after the consummation of the act complained of, and the authorities which we have cited necessarily support the proposition which we are now to discuss more fully, that after the consummation of the transaction, and the execution of the contract, dissenting stockholders of the Alice Company cannot maintain a suit to compel reconveyances, and rescind and cancel title deeds,

for the reason that the purchase of the property of the Alice Company by the Anaconda Company was for the purpose, entertained by the buyer, of restraining trade or monopolizing the copper industry.

Whatever may be said of the right of a stockholder of the buying company to prevent, by injunction, a purchase by his own Company, violative of the Sherman law and with the intent to monopolize interstate trade and commerce, we hold it to be beyond any known principle to permit either the selling corporation or a stockholder thereof to undo a completed transaction upon the ground that it had its inception in a purpose entertained by the buyer, which contravened public policy.

The present suit is a suit by stockholders on behalf of the Alice Company. If it might not be maintained by the Alice Company, upon the ground stated, it may not be maintained by stockholders thereof.

Fleitman v. Welsbach Co., 240 U. S. 27, 28.

This is clearly demonstrated by the equity rules of this court, which expressly provide that before a stockholder may maintain a suit in behalf of the corporation, he must make every reasonable effort to secure the suit to be brought by the corporation. If a stockholder might, on behalf of the corporation, maintain a suit which the corporation itself could not maintain, then a demand upon the corporation to bring a suit which it cannot maintain would simply be an idle performance, not required by any rule of equity.

The sale of this property by the Alice Company

to even a known trust was not *ultra vires*, for the Alice Company had a right to sell its property. It was not immoral, neither was it illegal, because there is no law prohibiting the sale of property to a corporation or an individual whose business may be conducted in restraint of interstate commerce.

Such sale upon the part of the Alice Company was void on account of the alleged trust character of the purchaser, neither was the title vested in the purchaser void on account of its alleged trust character; neither was it voidable at the suit of any one whomsoever, except the Government of the United States.

Indeed, the policy of disturbing as little as possible the property and property rights of unlawful combinations, has numerous times been approved by the Supreme Court of the United States. In *American Tobacco Company*, 221 U. S., page 185, in speaking of the principles which should be kept in view in rectifying the unlawful conditions which existed, the Court stated one of those to be a "proper regard of the vast interests of private property which may have become vested in many persons as a result of the acquisition either by way of stock ownership or otherwise of interests in the stock or securities of the combination without any guilty knowledge or intent in any way to become actors or participants in the wrongs which we find to have inspired and dominated the combination from the beginning."

Assuming the sale to have been for a fair price, and that must be assumed, when considering complainants' cause of action upon the sole ground of a violation of the anti-trust act, neither the Alice Company nor any stockholder was injured in the least by the sale of the property to the Anaconda

Company, though a trust, neither was it or they subjected to any penalties whatsoever.

If indeed, the case has shown that there was such a unity of interest between the Anaconda Copper Mining Company and the Alice Company, or such a common directorate, as to avoid the sale unless it was for full value and absolutely fair, this question must be dealt with independently of the allegations in reference to the Sherman Anti-Trust Act and under the proper subdivisions of complainants' Bill.

The authorities abundantly affirm the doctrine, that after a transaction contrary to public policy, is consummated, it may not upon that ground be rescinded, but the law will leave the parties in exactly the position in which they had placed themselves, *and the law implies a contract between the parties which is enforceable, that neither will attempt to undo that which has already been done.*

Boyd v. New York & H. R. Co., 220 Fed. 179;

Wilder, etc., v. Corn Products, etc., 236 U. S. 165;

Metcalf v. Am. Furn. Co., 122 Fed. 116;

Camors-McConnell Co. v. McConnell, 140 Fed. 415;

Connolly v. Union Sewer Pipe Co., 184 U. S. 547;

Santa Cruz v. Wykes, 202 Fed. 372;

Houston, etc., v. Texas, 44 U. S. Law Ed. 688.

The Boyd case, *supra*, was a suit brought for the purpose of undoing certain contracts and avoiding certain executed conveyances claimed to be in contravention of the Sherman Anti-Trust Law, as

well as for preventive relief against future wrongs. The Court said:

"If the lease of 1873 created a control or unity of competing interests forbidden by the Sherman Act, the fact that such obnoxious arrangements long antedate that statute does not render the act inapplicable.

"Complainants, however, have no standing to demand in this private litigation the abrogation of the lease, the restoration of the status of 1873, nor the sale by the Central of its Harlem stock. Such efforts are a usurpation of the functions of the executive; it does not lie in the power of private citizens to assume at will the duties of an Attorney General. (This was suit by stockholders.) Actions thus privately brought would be even more privately settled. The certain scandal and endless confusion resulting from such freedom of action are the sufficient reasons for cases like *National Fireproofing Co. v. Mason*, 169 Fed. 259."

The *Metcalf* case, *supra*, is exactly analagous, as we have hereinbefore pointed out upon the facts, to the one we are now discussing. The exact situation now being canvassed was therein presented, and among other things it was said (p. 123):

"The contract to purchase the plant of the Buffalo Company, in view of the determination of that Company to dissolve and discontinue business, was an enforceable contract. The American Company could not refuse to pay for the property bought, because of an asserted illegal combination; nor could the Buffalo Company refuse to convey after agreeing to do so. Such being the status of the vendor and vendee, complainant must be relegated to another remedy than that which she pursues for a vindication of any wrongs or damages sustained by her at the hands of the directors. As already stated, no fraud in the management of

the corporation or in the action of the majority stockholders is asserted in the bill, except inferentially, from the general charge of conspiracy to stifle competition in trade. The complainant could not prevent or control the lawful management of the affairs of the corporation, nor the discretion exercised in the sale of the property, unless it appears that such acts were *ultra vires* or in fraud of complainants' rights. The pleadings do not disclose such facts. Nor can the Company equitably rescind the sale because of any secret profit by the directors, or owing to their acceptance of an inadequate consideration. * * * In referring next to the actual transfer and its effect, it must not be overlooked that this was an executed contract. * * * Her right, as heretofore stated is not enlarged beyond that of the corporation. Her status is accordingly narrow and circumscribed. Title to property and its possession having passed to the grantee, the corporation is estopped from seeking a rescission of its contract. *A stockholder standing in the shoes of the corporation likewise is estopped from asserting the invalidity of such an act.* A court of equity would undoubtedly, at the suit of a stockholder, enjoin a threatened act by the corporation beyond its granted powers. But it is strenuously urged by complainant that the *ultra vires* acts invalidated the contract of sale. I think the weight of authority is against an interpretation of the doctrine of *ultra vires* as claimed by complainant. * * * 'It is a principle of universal application that whenever an illegal, immoral, or prohibited contract has been duly executed on both sides, the law will not lend its aid to either of the parties for the purpose of unraveling it and enabling him to recover what he may have lost through it.' In such cases the governing maxim is, '*In pari delicto potior est conditio defendentis*'. When therefore, a contract with a corporation, the making of which is beyond its granted powers,

has been duly executed by both parties, neither of them can assert its invalidity as a ground of relief against it."

In *Diamond Match Co. v. Kover*, 106 N. Y., 374, the Court said:

"We are not aware of any rule or law which makes the motive of the covenantor the test of the validity of such a contract; on the contrary, we supposed a party may legally purchase the trade and business of another for the very purpose of preventing competition, and the validity of the contract, if supported by the consideration, will depend upon the reasonableness as between the parties."

Nowhere in the act is it provided that the acquisition of property by illegal combinations shall be, by reason of such fact, void, now that any penalty shall be visited upon the corporation by the taking away of that property from it, unless, indeed, such may be done at a suit of the United States for the purpose of dissolving a monopoly, and then the property is only distributed in such a way as to prevent the monopolizing influences, and is never in any event given back to the seller.

Even admitting the sale of the property by the Alice Company to the Anaconda Company to have been in contravention of public policy, the wrong related to the public, and after the sale was completed, no injury, either in person or in property rights, arose which could be redressed by a suit either of the Alice Company or its stockholders.

As stated in *Wilder Mfg. Co., supra*, by Mr. Chief Justice White, the injury intended to be prevented is a public injury, and agencies have been provided therein for its redress. Whatever ethical standards the complainants, stockholders, may

have erected for themselves in relation to the propriety of the sale of the Alice property to a claimed trust or illegal combination, courts of equity cannot give effect thereto. High ideals are commendable, but when dissociated from personal or property wrongs to the complaining parties, violation of the same is not actionable.

In the case of *Santa Cruz v. Wykes*, *supra*, in discussing the question of the rescission of executed contracts made *ultra vires*, that Court on page 371 said:

"The principle applies not as an estoppel to the corporation, where the *ultra vires* contract is still executory, to set up its incapacity to entertain it; but where the contract has been executed—that is, fully and completely performed on both sides—the court will not interpose to restore either party his former estate, or grant other relief, but will leave the parties where it found them. * * * But in a much earlier case the doctrine is affirmed that though an illegal contract will not be enforced by the courts, yet where such a contract has been executed by the parties themselves, and the illegal object has been accomplished, the money or thing which was the price of it may be a legal consideration between the parties for a promise express or implied and the transaction will not be unraveled for the ascertainment of its origin."

In the case of *Houston & T. C. Ry. Co. v. Texas*, U. S. 44 Law Ed., foot page 688, wherein the Supreme Court of the United States was discussing the rescission of a contract entered into in violation of law and in contravention of public policy, it was said:

"After the complete execution of the transaction, it must be that each party thereupon

and at once, becomes possessed of certain legal rights arising from its performance. Neither party could undo what had been fully executed and completed, and the law therefore implies a contract, that neither party will attempt to do so; or, in other words, the law implies a contract that the payments made shall not be thereafter repudiated or denied. Any subsequent statute of the state, which repudiated or permitted the repudiation of the payments, would impair the obligations of the contract which the law raises from the transaction itself."

See also:

Long v. Georgia Pacific Railway Company, 91 Ala. 519;

Illinois Trust & Savings Bank v. Pacific Railway Company, 117 Cal. 332;

Planters' Bank v. Union Bank, 16 Wallace, 500.

But why pursue the subject? There is no contrariety or dissent in the authorities. This case falls within none of the exceptions or modifications of the rule. Clearly the Alice Company could not be granted relief in this suit. The plaintiff stockholders sue in a representative capacity. They do not sue as beneficiaries. Suing in a representative capacity, they cannot have relief on behalf of the Company, which the Company could not obtain upon its own behalf.

While this case does not proceed upon any common law theory, but is grounded wholly, as hereinbefore pointed out, upon the anti-trust act, it may not be impertinent to say that laying aside the anti-trust act, a stockholder could not, at common law, under circumstances of this character, maintain a suit to rescind the sale.

A very full and learned discussion of this question may be found in *Metcalf v. American Furniture Co.*, 122 Fed. 116, cited, *supra*, and hereinbefore quoted from at length.

The sole ground upon which the jurisdiction of courts of the United States is invoked is the questions presented touching the Sherman Anti-Trust Law. Before the decision of the case in the District Court, the case of *Wilder Mfg. Co. vs. Corn Products Refining Co.*, *supra*, clearly holding that this question was not available to the complainants, was decided. Long prior thereto the controlling principles upon which that case rests were repeatedly enunciated by this Court. Under these circumstances, when this appeal was taken from the Court of Appeals, the questions in this case arising upon the Sherman Anti-Trust Law were frivolous, and it might perhaps be plausible and reasonably argued that for this reason the appeal ought to be dismissed; but however this may be, and if indeed it ought not to be dismissed, it is nevertheless true that under these circumstances this Court will not do more, in the investigation of the other questions presented, than to examine the record sufficiently to determine whether or not *plain error* has been committed:

- Chicago Junction Ry. Co. *v.* King, 222 U. S. 220, 224;
- Southern Ry. Co. *v.* Gadd, 233 U. S. 572, 576;
- Yazoo & Mississippi R. R. Co. *v.* Wright, 235 U. S. 376, 378;
- C. & C. Merriam Co. *v.* Syndicate Pub. Co., 237 U. S. 618;
- Eichel, *et al.*, *v.* U. S. Fidelity & Guaranty Co., 245 U. S. 102.

II.

The purchase of the Alice properties would not tend to effectuate any illegal purpose to monopolize interstate commerce in copper, as alleged in complainants' bill, and would therefore neither be illegal nor against public policy.

The allegations contained in complainants' bill, and whatever proof they had, was directed to establishing that the Amalgamated Copper Company was formed with the purpose of monopolizing commerce in copper, and that the acquisition of the Alice properties was in the pursuit of such purpose. The undisputed evidence is that the Alice properties never were, and are not, copper producing. A great amount of development work has been performed upon the properties, and very large amounts of ore taken therefrom, the product of which has always been silver and gold and zinc. If any copper whatever is contained in the ores, its value is entirely negligible. Even its *situs* would not lead to any reasonable probability that any expenditures, however large, would result in its becoming copper producing. It is not within reasonable proximity to the copper zone, and practically all other properties upon the same lode have produced silver and gold and zinc. It clearly appears from the testimony of all who testified upon the point that it was its prospective zinc and silver values which induced the purchase, and that at the most the purchase was only speculative, and its future value entirely dependent upon the development of future processes adapted to the treatment

of zinc ores of the character contained therein. Even though the purchasers may have entertained a hope, under such circumstances, that copper might subsequently be found in the properties, the conclusion of the court cannot be based upon the same. Since then the productive power of the properties has been limited to metals other than copper, and it is apparent that the acquisition of these properties would not tend in the least to effectuate the evil purposes charged against the Amalgamated Copper Company in this suit, and not tending towards monopoly in this designated metal, the purchase would be entirely legal and not contrary to public policy, and certainly not inhibited by any provision of the anti-trust act. Not only this, but the acquisition of the property would be entirely collateral to the evil purposes charged against the wrongdoer; being collateral to such evil purposes, the law recognizes such a purchase as being free from any vice whatever, and it will not only sustain the same after the transfer has been accomplished, but if a contract of purchase existed between the parties which was entirely executory, specific performance would compel a compliance therewith. This is distinctly ruled, as we take it, in *Connolly v. Union Sewer Pipe Company*, *supra*, and the general principles will be found discussed in

Section 355, Moore on Interstate Commerce,

and standing alone, this one proposition would, in our judgment, necessarily, defeat the plaintiffs' claim that the sale of these properties ought to be rescinded because violative of the Sherman Anti-Trust Act, in that it tends to a monopoly in the copper commerce of the country.

III.

Neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company was at the time of the purchase of the Alice properties, neither had they ever been, illegal combinations in restraint of interstate commerce, and the Anaconda Company, under the circumstances disclosed in this case, had the legal right to acquire the Alice properties for the purposes and in the manner in which they were acquired.

In approaching this subject, it is necessary to inquire somewhat into the allegations of complainants' bill, and to discover whether or not these allegations are sustained by the proof.

Aside from the allegation that in the year 1899 certain individuals, with a view among other things, to control the production of copper and the supply thereof, and to fix and regulate the price thereof in the markets of the world, and to suppress competition in the sale thereof, organized the Amalgamated Copper Company, or caused the same to be organized, no essential material controverted allegation of complainants' bill has been supported by any evidence whatever. The allegation as to the intent with which the Amalgamated was organized is supported only to a limited extent by the testimony of Lawson, given under circumstances and in a manner which discredit it, and which is fully contradicted by the testimony of Burrage, as well as by fifteen years of unimpeachable conduct upon

the part of the Amalgamated. All other material allegations controverted in this case have not only no testimony to support them on the part of the complainants, but are emphatically disproved by uncontradicted and creditable testimony.

There is no testimony whatever tending to establish the allegation that the acquisitions of the Amalgamated of the stocks of the various mining companies in Butte were for the purpose of monopolizing interstate trade in copper products; neither is there any proof that in the year 1910, with such illegal purpose, and more effectually to carry the same out, the Amalgamated deemed it advisable for the Anaconda to become invested with the physical properties and with the title to the same, or to all the properties which, by development or operation, might give rise to any competition in the production or sale of copper. Neither is there any proof that the Amalgamated, in association with the Anaconda Company, for a like purpose, purchased the Clark properties. On the contrary, the proof distinctly shows that such was not the purpose. Neither is there any proof that the Amalgamated, with any evil purpose, or otherwise or at all, caused the Butte Coalition Company to be organized, or that it ever held a majority or controlling interest in said Company. On the contrary, the proof is positive that neither the Amalgamated nor the Anaconda had anything whatever to do with the organization of Butte Coalition, and that Amalgamated never at any time owned to exceed 50,000 shares of an issued capital stock of 1,000,000 shares, in said Company.

There is no proof that the Amalgamated or the Anaconda Company caused the Butte Coalition

Company to acquire a majority of the stock of the Alice Company.

There is no proof that the Amalgamated or Anaconda, prior to the year 1910, controlled and dominated the business and affairs of the Alice Gold and Silver Mining Company, or elected boards of directors of the Alice Company, or that they were in possession of the said Alice Gold and Silver Mining Company.

There is no proof that the Amalgamated or the Anaconda Company caused a meeting of the stockholders of the Alice Company to be held for the purpose of transferring the properties of the Alice to the Anaconda, or that they, or either of them, controlled the meeting of such stockholders. Neither is there any proof that the directors of the Alice Company acted under the direction or control of either the Amalgamated or Anaconda, but on the contrary the testimony shows that if any influence whatever was exercised over the Alice Company, its stockholders and directors, it was the influence which the Butte Coalition legitimately exercised by virtue of its ownership of a majority of the stock of that company; that the Butte Coalition Company was not related in any way, or in the least, under the domination of either the Amalgamated or the Anaconda, and that at no time did either of said companies own more than one-twentieth of the total issued capital stock of said Butte Coalition Company.

Thus understood, the sole question is here presented whether this sale may be avoided by stockholders of the Alice Company on account of the relations existing between the Amalgamated Company and the Anaconda Company, such Amalgamated Company owning a majority of the stock of the Anaconda Company, the Anaconda Company

being the purchaser; on account of the alleged trust character of the Amalgamated Company itself, claimed to have arisen out of the magnitude of its investments in the stock of Butte mining companies, and a claimed intention of its promoters, existing in 1899, to control the production and price of copper.

We do not understand the complainants, either by allegation or proof, to assert that either the Anaconda Company or the Amalgamated Company have ever restrained interstate trade in copper, or that they have ever, in the legal sense, monopolized the copper business in the United States, or, so far as commerce therein is concerned, between any of its states. Neither do they claim that either of said companies has ever brought about any of the evils against which the Sherman Anti-Trust Law is directed, and which are tersely stated in the Standard Oil case to be:

- (a) Raise the price to the consumers of the articles they affect;
- (b) Limit their production;
- (c) Deteriorate their quality.

But we understand it to be claimed that the Anaconda Company, by its acquisition of mining properties in the Butte District, and the Amalgamated Company by its control of the majority of the stock of the Anaconda Company at the time of the acquisition of the Alice properties, had the power to restrain competition in copper products, and that such power alone rendered them inimical to the law in question. Complainants' position can be better stated in the language of their brief. By

devious reasoning and in apposite authorities, they reach the following conclusion :

"If a combination tends to defeat competition, it is unlawful. Such was the character of the combination which has been the subject of this study" (Appellants' Brief in Court of Appeals, p. 139).

A new phase indeed, and wholly inadequate as a definition of a combination rendered illegal by the anti-trust law ; and a phrase which we venture to assert has never received deliberate judicial approval, and which does not measure to the standard established by the decisions of the Supreme Court of the United States. That it omits many elements which must be included before a combination becomes obnoxious, and that it is incorrect is clearly disclosed in many cases, including the *Du Pont* case, 188 Federal, 127, at page 150, from which we quote the language of the Circuit Court of Appeals, written by Judge Lanning, and concurred in by Judges Gray and Buffington :

"As enacted, it does not condemn every combination 'to prevent competition'. What it condemns is every combination in restraint of trade or commerce among the several states, etc. When the bill went from the Senate to the House, the latter body amended it by inserting a provision extending the scope of the act to all agreements entered into for the purpose of 'preventing competition' either in the purchase or sale of commodities, but the amendment was disagreed to. While there is a 'general acquiescence in the doctrine that debates in Congress are not appropriate sources of information from which to discover the meaning of the language of a statute passed by that body' (*United States v. Freight Association*, 166 U. S. 318, 17 Sup. Ct. 540; 41 L. ed. 1007), that rule 'in the nature

of things is not violated by resorting to debates as a means of ascertaining the environment at the time of the enactment of a particular law; that is, the history of the period when it was adopted' (Standard Oil Co. v. United States, 221 U. S. 50; 31 Sup. Ct. 512; 55 L. ed. 619 (34 L. R. A. (N. S.) 834; Ann. Cas. 1912D, 734), decided May 15, 1911).

"There is a distinction between restraint of competition and restraint of trade. The latter expression had, when the Anti-Trust Act was passed, a definite legal signification. Not every combination in restraint of competition was, in a legal sense, in restraint of trade. Two men in the same town engaged in the same business as competitors may unite in a copartnership, and thereafter, as between themselves, substitute co-operation for competition. Their combination restrains competition, and if their town is located near the line between two states, and each has been trading in both states, their combination restrains competition in interstate trade. But it does not necessarily follow that such restraint of competition is a restraint of interstate trade and commerce. The determination of whether it be so must depend upon the facts and circumstances of each individual case. It is undoubtedly the policy of the statute that competitive conditions in interstate trade should be maintained wherever their abolition would tend to suppress or diminish such trade. But this being true does not read into the statute a denunciation of all agreements that may restrain competition without regard to their purpose or direct effect to restrain 'trade or commerce among the several states.' To what extent the Anti-Trust Act condemns combinations that restrain full and free competition in interstate trade is a question that has been much debated. For a dozen years, at least, it has been settled that it does not condemn combinations which

only indirectly, remotely or incidentally restrain interstate trade.

"The recent decisions of the Supreme Court in *Standard Oil Co. v. United States*, and *American Tobacco Co. v. United States*, 221 U. S. 106, 31 Sup. Ct. 632, 55 L. Ed. 663, make it quite clear that the language of the Anti-Trust Act is not to receive that literal construction which will impair rather than enhance freedom of interstate commerce. As we read those decisions, restraint of interstate trade and restraint of competition in interstate trade are not interchangeable expressions. There may be, under the Anti-Trust Act, restraint of competition that does not amount to restraint of interstate trade, just as before the passage of the act there might have been restraint of competition that did not amount to a common-law restraint of trade. This fact was plainly recognized in *United States v. Joint Traffic Association*, 171 U. S. 505, 567; 19 Sup. Ct. 31; 43 L. Ed. 259, where Mr. Justice Peckham said:

"We might say that the formation of corporations for business or manufacturing purposes has never, to our knowledge, been regarded in the nature of a contract in restraint of trade or commerce. The same may be said of the contract of partnership. It might also be difficult to show that the appointment by two or more producers of the same person to sell their goods on commission was a matter in any degree in restraint of trade. We are not aware that it has ever been claimed that a lease or purchase by a farmer, a manufacturer, or merchant of an additional farm, manufactory, or shop, or the withdrawal from business of any farmer, merchant, or manufacturer, restrained commerce or trade within the legal definition of that term."

Ex-President Taft, in his work on "The Anti-Trust Act and the Supreme Court," after a thorough

study of the decisions of the Supreme Court in cases arising under the Anti-Trust Act, says:

"The effect of the cases is that a mere union of capital in the same branch of industry, for the purpose of promoting economy and efficiency, though it uses interstate commerce, and though to the extent of the business of the two forms or companies it suppresses the competition of each against the other, is not within the statute unless what is done necessarily has the effect to control all the business or can be shown by the character of the acts to be intended to effect that purpose or to be a step in the plot to bring it about. Mere bigness is not an evidence of violating the act. It is the purpose and necessary effect of controlling prices and putting the industry under the domination of one management that is within the statute" (p. 112).

Again he says:

"The object of the anti-trust law was to suppress the abuses of business of the kind described. It was not to interfere with a great volume of capital which, concentrated under one organization, reduced the cost of production and made its profits thereby and took no advantage of its size by methods akin to duress to stifle competition with it. I wish to make this distinction as emphatic as possible, because I conceive that nothing could happen more destructive to the prosperity of this country than the loss of that great economy in production which has been and will be effected in all manufacturing lines by the employment of large capital under one management" (pp. 126-7).

A prolonged discussion of the alleged trust character of the Amalgamated Copper Company, dissociated from the relations which it held to the

Anaconda Company at the time of the acquisition of the Alice property, will not, in view of the circumstances of this case, greatly aid the court in deciding the question at issue, for at the time of the acquisition of the Alice property, the Amalgamated had ceased to control, by stock ownership, the various Butte companies in which it originally purchased stock, for it will be remembered that all the property of such companies had been purchased outright by the Anaconda Company, and the relations of the Amalgamated Company to the Anaconda Company were merely that of a majority stockholder in that company, subject to the same rights and privileges and responsibilities as any other majority stockholder in that company would be subject to, for transactions carried out by the Anaconda Company.

However, it may be said that the Amalgamated Company did not at any time, through its stock ownership, monopolize interstate commerce in copper, neither did it attempt to do so; neither did it ever have the *power* to do so. Neither does the evidence disclose that it was guilty of any act which was illegal, unlawful or indicated that it was either in effect or purpose an illegal combination prohibited by the Sherman anti-trust law.

Undoubtedly it was originally organized because it was believed that the acquisition of stocks in valuable mining properties would be a profitable business venture. Its ownership of these stocks never produced any of the evils against which the anti-trust law is directed. There is no evidence that it used its power to enhance the selling price of copper or to limit the production thereof, or to depreciate the quality of the product. The manner of its acquisition of the stocks of the several

companies was wholly unobjectionable, and bears no indication of having been unfair or having been obtained by illegal practices. It does not appear that it ever interfered with the internal control of the several companies.

The aggregate of capital finally employed in the acquisition of these stocks was large. Much stress appears to be laid upon this point by complainants' counsel. Undoubtedly the stocks were worth what was paid for them, and they were paid for in cash. Figures are always relative; while large in the aggregate, this sum may have been, and doubtless was, small in proportion to the aggregate amount of capital which would have been required to have obtained a monopolistic control over the production of copper in the United States.

No inference of evil can therefore be drawn from the amount of capital invested.

Much space is allotted in argument to inquiries as to why the promoters of this company did not acquire and own individually the stocks that they desired, instead of forming a corporation for the ownership of the same. We have been utterly unable to grasp the materiality of the inquiry. The control of the promoters, by personal ownership of the stock, would have been as complete as that of the corporation by its ownership of the same. The corporation was entirely legal. Its right to purchase stock is undisputed. No inference of wrongdoing can be drawn from any act, however, performed, if the same is legal and embraces no evil purpose. Monopoly of individuals is as offensive as monopoly of corporations. It therefore appears to us wholly immaterial whether these stocks were held by individuals collectively or collectively by a corporation. It has been too often adjudged to

be longer open to dispute, that the mere form which a combination takes is immaterial, but that the law, ignoring forms, looks to the substance, purpose and the result of the prohibited act.

During the control of these companies by the Amalgamated, the production of copper from the Butte mines, instead of decreasing, constantly increased. The sales of the same increased. There was no stifling of either production or competition. Although this production increased, it did not increase in the same ratio as the production of the United States as a whole. That production almost doubled. And it must be said, that if there was any purpose in the promoters of the Amalgamated Copper Company, through it, to monopolize the copper industry in the United States, that Company proved ineffectual to carry out such purpose, and not having the power to do so, any intention of the original promoters in that regard has proven to be wholly immaterial.

At a time when these companies controlled by the Amalgamated Copper Company, produced proportionately more of the copper of the United States than they did in 1910, the Supreme Court of the State of Montana, in the case of *MacGinniss v. Boston and Montana*, 29 Montana 428, had under review its alleged unlawful character. The question arose under the constitution of the State of Montana and our local law, designed to prevent trusts and combinations. It must be said that these laws reached all the evils designed to be prevented by the Sherman Anti-Trust Law, insofar as these evils affected the local situation. Indeed, our Constitution and statute are both more specific and broader in their provisions, if that were possible, than the law now under consideration.

(a) In that case it was held that a private individual could not undertake to enforce such laws, by a suit in equity; that this was the duty devolving upon the state.

(b) That the Amalgamated Copper Company had the right to acquire the stocks of the various companies which it acquired, provided that acquisition was not for the illegal purpose of restraining trade; in other words, that there must be an evil intent in the acquisition, that it will result and is for the purpose of contravening the statute and the constitutional provisions.

(c) The Amalgamated Copper Company had done nothing which would indicate any purpose to control commerce or to create a monopoly.

(d) That the mere possession of power upon the part of the Company to restrain trade, if it chooses to exercise it, is not sufficient to bring it within the punishments provided by law, and before it could be reached it must put that power into exercise.

We believe this decision not to be at variance with any controlling decision of the Courts of the United States, the same having been substantially held in many cases entirely analagous upon principle with this. But as we have above indicated, we believe that the situation of affairs, the relative position of the Anaconda Company in the copper world, the purpose, intent and effect of its acquisition of the Alice properties and other Butte properties, which it acquired in the year 1910, in connection with the relation borne to the Anaconda Company by the Amalgamated Company, which was at that time that of a majority stockholder, and the further fact that neither the Amalgamated

nor the Anaconda Company, in the year 1910, had the power to monopolize, either geographically or distributively, interstate commerce, and that the acquisition of the Alice properties did not render the acquisition of such power dangerously probable, are the questions of concern in determining whether such acquisition was contrary to the Sherman Anti-Trust Law.

At that time, and for many years prior thereto, all the properties of all the companies formerly controlled by the Amalgamated Company, through stock ownership, and afterward acquired by the Anaconda Copper Mining Company, in which the Amalgamated Company owned a majority of the stock, and all other acquired properties, produced only about twenty-one per cent. of the copper of the United States. The proportion produced by those companies of the whole in the United States had, for many years, decreased.

The acquisition of these properties by the Anaconda Company was an acquisition by purchase. True, they were not paid for in cash. We can hardly comprehend that a transaction becomes abnormal or unusual, simply because the purchaser must borrow the money, or because the purchaser issues stock in payment therefor.

However, this is of little consequence in the ultimate resolution of this question. Certainly none of the evils of monopoly either followed or preceded the acquisition of the copper properties at Butte by the Anaconda Copper Mining Company, and this must be one of the controlling tests in determining whether the combination effected was an unreasonable combination in restraint of trade and commerce.

No control had been exercised over the price of copper to increase it to the consumer. There had been no limitation of production, for the production was constantly increasing. There had been no deterioration in the quality of the product; no censurable influences had been brought to bear upon competitors; wages and working conditions had constantly improved.

Neither the Amalgamated nor the Anaconda Company had acquired the preponderate position in the copper business, nor sufficient power to render their acquisitions repugnant to the Sherman Anti-Trust Law, and the acquisition of the Alice properties did not render it dangerously probable that they would acquire such preponderate position, or if acquired, that they would use the same in violation thereof.

The controlling reasons, and that which induced these various acquisitions of property, are clearly set out by the testimony in the record. They were substantially as follows:

(a) Very large economies in management and production; thus enabling weak companies to continue operation.

(b) The final settlement and adjustment, as between stockholders and companies with divergent interests, without litigation, of apex rights upon which the very life of several of the companies depended,—rights of similar difficulties and of similar natures, as those which had formerly caused the Butte operators to waste their substance in violent and destructive litigation, and thus obviating large expenditures to determine the respective rights in relation to these matters.

(c) The acquisition of new properties to prolong the life of the Anaconda Company and make up for ore depletions which were constantly occurring in the natural operation of the same. In this regard, it was immaterial whether such acquisitions produced copper, silver, gold or zinc, provided they resulted in profit and took the place of depleted ore reserves.

That these were the prime factors leading to all acquisitions by the Anaconda Company of properties in the Butte District is made clearly to appear from the testimony of C. F. Kelley, set out in the foregoing statement of the case, subdivision V, and that they were legitimate and proper, and that such acquisitions would, in the long run, tend not to restrain interstate commerce in copper, but to facilitate the same, must be seen by anyone with a knowledge of the mining industry, and particularly anyone with a knowledge of mining events in the copper world.

Indeed, upon the results sought to be obtained by these acquisitions, would ultimately depend the very life of the mining industry in this state. For many years the general production in the United States has been rapidly increasing. Year after year the Butte properties produced less in proportion to the aggregate than formerly. Year after year, the demands for wages, and the expense of supplies and the requirements of improved mining conditions, have been enhancing the cost of production. Year after year the Butte mines have been growing deeper, and the ore reserves becoming baser.

Mr. Gillie's testimony shows that with all the acquisitions of the Clark and Heinze properties, at the time the Alice properties were acquired the

total ore reserves were not as great as they were in the several mining properties which were originally controlled through stock ownership by the Amalgamated Copper Company (see Tr., Vol. II, p. 942). In the meantime, almost inexhaustible porphyry deposits had been developed in Utah, Nevada, Arizona and New Mexico, where the copper, instead of being taken from 3,000 feet beneath the surface of the earth, was being taken out by steam shovels, and which production it is a matter of current history was much cheaper than the Butte District, and the amount of such production almost without limit.

Therefore, unless such economies could be brought about, and the life of the Butte mining camp extended, and apex controversies satisfactorily adjusted, it was inevitable that in the course of a few years the Butte district must cease to be a substantial competitor with the other copper companies of the United States.

Such being the purposes and objects of these acquisitions, and such purposes and objects being necessarily essential to the welfare of the companies, then any result, if any followed, tending to restrain interstate trade in this product would be indirect, and not condemned by the Sherman law, and any restraint occurring therefrom would not be unreasonable according to the authorities.

We invite the Court's attention to *Bigelow v. Calumet & Hecla*, 155 Federal, 869; same case, 167 Federal, 704 (District Court); same case, Circuit Court of Appeals, page 721. On page 712, it was said:

"We are thus brought to the question whether the necessary effect of the alleged combination is to restrain trade or create a monopoly. It is settled that a combination

does not violate the Federal Statute merely because it may indirectly, incidentally, or remotely restrain trade or tend toward monopoly. If its necessary effect is to stifle or to directly and substantially restrict interstate commerce, it falls under the ban of the law. On the other hand, if it only incidentally or indirectly restricts competition, while its main purpose and chief effect are to promote the business and increase the trade of the consumers, it is not denounced or voided by that law."

In the opinion of the Circuit Court of Appeals, affirming this case, on page 725 it is said:

"It is therefore well settled that it does not apply to restraints or monopolies as such, but only to those which directly and immediately, or those which necessarily affect commerce among the states or with foreign nations. If the law were held applicable to contracts or combinations indirectly or remotely affecting such commerce, it would substantially obliterate the distinction between interstate and intrastate commerce."

Again:

"The power of stock control which the Calumet Company has acquired, may be exercised only in legitimate and lawful ways in the interest of economical management of both companies. In that case it has done nothing effecting commerce among the states. On the other hand, that power may be a mere preparation for the doing of acts which will directly and necessarily interfere with the freedom of that kind of commerce which it is the purpose of Congress to protect. When this unlawful use of the power shall result in an unlawful restraint, or further steps shall point to results directly affecting such commerce, there may be interference by the courts."

Again:

"In a very convincing opinion, the judge who heard the case below states the leading facts which made it desirable and economical that there should be, to a certain extent, a co-operation in future mining operations by the two companies, in order that certain poorer lodes underlying the conglomerate lode of the Calumet Company, which has been worked to a point where exhaustion is in sight, may be worked to the best advantage of both companies. We shall not go into the details. We refer and adopt the conclusion stated by Judge Knappen: 'I am convinced, from a careful consideration of the testimony, that the controlling motive and purpose of the Calumet & Hecla Company in acquiring its interest in the mining properties mentioned, was to extend its industrial life, and keep up and increase, if possible, its production and net earnings, and that the evidence fairly negatives a design thereby to reduce the output of any of the companies or artificially to increase or maintain the price of the product, or to stifle competition between the related companies, or to prejudice other stockholders generally of either company associated, or to interfere with the integrity of either company, a common management with separate detailed organization being contemplated. The evidence does not indicate that any use of the facilities of the associated companies is contemplated, except upon terms and in manner mutually advantageous.'"

By reference to the first citation, 155 Federal, it will be disclosed that the issue in this case included not only a mere combination in production but a combination in the marketing and sale of the copper products in interstate commerce. The authority of the case is vigorously assailed by the

appellants by the assertion that the same has been practically overruled, and it is said that the decision is grounded squarely upon the Knight case, which it is said has been modified to such an extent as to make it inapplicable. We say, however, that the facts of the Bigelow case being analagous, and the reasoning of the several decisions sufficient to sustain the conclusion, that the fact, if it be such, that the Knight case was approvingly mentioned in the opinion and that it was not in all respects applicable, does not destroy the force of the precedent, and that enough remains in the argument to show, together with the authorities cited, that notwithstanding any misapplication of the Knight case to the facts of the Bigelow case, the decisions must necessarily have been the same.

In *Standard Oil Co. v. U. S.*, 221 U. S. 1, 66, the following from the case of *Hopkins v. United States*, was quoted with approval:

"To treat as condemned by the act all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased would enlarge the application of the act far beyond the meaning of the language used. There must be some direct and immediate effect upon interstate commerce in order to come within the act."

The rule announced in the *Standard Oil* and *Tobacco* cases, that in order to be inhibited, the restraint accomplished must be unreasonable and undue, is the corollary of the rule in relation to direct and indirect effect, to which we have heretofore referred, and whichever principle is appealed to, both being substantially alike, the same result

will be attained. In the Standard Oil case, page 58, the rule of unreasonable restraint is thus stated :

“Without going into detail and but very briefly surveying the whole field, it may be with accuracy said that the dread of enhancement of prices and of other wrongs which it was thought would flow from the undue limitation on competitive conditions caused by contracts or other acts of individuals or corporations, led, as a matter of public policy, to the prohibition or treating as illegal all contracts or acts which were unreasonably restrictive of competitive conditions, either from the nature or character of the contract or act or where the surrounding circumstances were such as to justify the conclusion that they had not been entered into or performed with the legitimate purpose of reasonable forwarding personal interest and developing trade, but on the contrary were of such a character as to give rise to the inference or presumption that they had been entered into or done with the intent to do wrong to the general public and to limit the right of individuals, thus restraining the free flow of commerce and tending to bring about the evils, such an enhancement of prices, which were considered to be against public policy.”

After analyzing the statute, the court on page 60, said :

“The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, which did not unduly restrain interstate foreign commerce, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an inference that is an undue restraint.

"c. And as the contracts or acts embraced in the provision were not expressly defined, since the enumeration addressed itself simply to classes of acts, those classes being broad enough to embrace every conceivable contract or combination which could be made concerning trade or commerce or the subjects of such commerce, and thus caused any act done by any of the enumerated methods anywhere in the whole field of human activity to be illegal if in restraint of trade, it inevitably follows that the provision necessarily called for the exercise of judgment which required that some standard should be resorted to for the purpose of determining whether the prohibitions contained in the statute had or had not in any given case been violated. Thus not specifying but indubitably contemplating and requiring a standard, it follows that it was intended that the standard of reason which had been applied at the common law and in this country in dealing with subjects of the character embraced by the statute, was intended to be the measure used for the purpose of determining whether in a given case a particular act had or had not brought about the wrong against which the statute provided."

Again it is said on page 62:

"In other words, that freedom to contract was the essence of freedom of undue restraint on the right to contract."

The rule was further elucidated by its restatement in the case of *The United States v. American Tobacco Company*, 221 U. S. 106, wherein, on page 178, it is said:

"The obscurity and resulting uncertainty, however, is now but an abstraction because it has been removed by the consideration which we have given quite recently to the construction of the Anti-trust Act in the *Standard Oil*

case. In that case it was held, without departing from any previous decision of the court that as the statute had not defined the words restraint of trade, it became necessary to construe those words, a duty which could only be discharged by a resort to reason * * * (citing cases). That such view was a mistaken one was fully pointed out in the Standard Oil case and is additionally shown by a passage in the opinion in the Joint Traffic Case as follows (171 U. S. 568): 'The Act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing on interstate commerce, and possibly to restrain it.' Applying the rule of reason to the construction of the statute, it was held in the Standard Oil case that as the words 'restraint of trade' at common law and in the law of this country at the time of the adoption of the Anti-Trust Act only embraced acts or contracts or agreements or combinations which operated to the prejudice of the public interests by unduly restricting competition or unduly obstructing the due course of trade or which, either because of their inherent nature or effect or because of the evident purpose of the acts, etc., injuriously restrained trade, that the words as used in the statute were designed to have and did have but a like significance. It was therefore pointed out that the statute did not forbid or restrain the power to make normal and usual contracts to further trade by resorting to all normal methods, whether by agreement or otherwise, to accomplish such purpose. In other words, it was held, not that acts which the statute prohibited could be removed from the control of its prohibitions by a finding that they were reasonable, but that the duty to interpret which inevitably arose from the general character of the term restraint required that the words restraint of

trade should be given a meaning which would not destroy the individual right to contract and render difficult if not impossible any movement of trade in the channels of interstate commerce—the free movement of which it was the purpose of the statute to protect. The soundness of the rule that the statute should receive a reasonable construction, after further mature deliberation, we see no reason to doubt. Indeed, the necessity for not departing in this case from the standard of the rule of reason which is universal in its application is so plainly required in order to give effect to the remedial purposes which the act under consideration contemplates, and to prevent that act from destroying all liberty of contract and all substantial right to trade, and thus causing the act to be at war with itself by annihilating the fundamental right of freedom to trade which, on the very face of the act, it was enacted to preserve, is illustrated by the record before us.”

In reference to the similarity of the rules, in reference to direct and indirect results, and legal and proper intents and purposes, as distinguished from those which are illegal and improper, and the rule in reference to reasonable and unreasonable restraints, in the Standard Oil case, on page 66, it was said:

“If the criterion by which it is to be determined in all cases whether every contract, combination, etc., is a restraint of trade within the intendment of the law, is the direct or indirect effect of the acts involved, then of course the rule of reason becomes the guide, and the construction which we have given the statute, instead of being refuted by the cases relied upon, is by those cases demonstrated to be correct. This is true, because as the construction which we have deduced from the

history of the act and the analysis of its text is simply that in every case where it is claimed that an act or acts are in violation of the statute the rule of reason, in the light of the principles of law and the public policy which the act embodies, must be applied. *From this it follows, since that rule and the result of the test as to direct or indirect, in their ultimate aspect, come to one and the same thing, that the difference between the two is therefore only that which obtains between things which do not differ at all."*

Applying therefore to the facts of the acquisition of the properties of the several mining companies in Butte by the Anaconda Copper Mining Company, the rules hereinbefore stated, it becomes immediately apparent that such acquisition did not amount to a violation of the Sherman Act. Neither did it, nor could it, result in an undue or unreasonable restraint of trade as that term is legally understood and interpreted.

The testimony of Mr. Kelley, hereinbefore set out at length, shows that the controlling purposes in these acquisitions were not to restrain or monopolize trade, but were to bring about large and essential economies in the production of copper; to save many of these companies from actually operating at a loss; to prevent the necessity of expending unlimited amounts of money in determining the apex rights of the various companies in order to protect the diversified stock interests held therein; and also to save enormous expenditures in maintaining and keeping up separate workings in the several companies; and carrying on separate and independent development work, all of which might well be done together; and the acquisition of the Alice property particularly, as well as many

others, was for the purpose of preventing the life of the company being extinguished and its usefulness ended by the depletion of its ore reserves.

The testimony of Mr. Gillie shows that with all the acquisitions of the Alice properties, the Clark properties and the Heinze properties, the ore reserves of the Anaconda Copper Mining Company combined, were not equal to what the ore reserves were of the several companies whose control was acquired by the Amalgamated Company in the year 1899.

These things were entirely legitimate; these purposes are free from fault. They demonstrate only the exercise of ordinary business prudence. Their essential tendency was, as we have hereinbefore pointed out, not to restrain, but to ultimately expand and develop interstate trade in the copper product. Such being so, whatever incidental restraint of either competition or commerce (the two being distinguishable), arose out of these acquisitions, must be held under the authority of all the cases to be indirect, collateral, incidental, and not inhibited by the Anti-trust Act. Also, whatever restraint, if any, incidentally arose, either to competition or to interstate trade, was not undue, neither was it unreasonable; but quite the contrary, under the definitions hereinbefore quoted. Can it be said to have been an unreasonable exercise of inherent right of every company or individual, to contract for its own advancement to acquire these properties, when the acquisition was absolutely essential for the purposes hereinbefore stated? The acquisition was lawful; it was a reasonable exercise of the contracting power of the corporation in its direct purpose, and no unlawful intent was entertained. Its ultimate result will

be, as the Court knows, to enable the Butte camp to operate many years longer than it would be enabled to operate under the system of independent companies and organizations, all of which leads unerringly to a result beneficial to the interstate trade in the copper product. Such being true, the acquisition of these properties must be held to be altogether legal, and a legitimate exercise of the corporate power of the Anaconda Copper Mining Company to maintain and continue its own existence, and to carry out the purpose for which it was organized.

In complainants' brief, the following is quoted from Judge Smith's opinion in the International Harvester Company case, 214 Federal 987, the same being a case greatly relied upon by the complainants in their argument:

"Suppression of competition, where the parties to a combination control a large portion of the interstate or foreign commerce in the article, and where there is no obligation to form the combination, arising out of the fact that the parties to the same are losing money or the like, has been held an undue restraint of trade."

If the fact that the parties are "losing money or the like" would entitle those controlling a large portion of the interstate or foreign commerce in an article, to enter into a combination in relation to the same, then would not the facts hereinbefore set out authorize the acquisition of competing properties in the same neighborhood, when the entire acquisition did not produce more than twenty-five per cent of the total output of the product in the United States? Certainly the impelling reasons for these acquisitions in the case at bar fall within the lan-

guage of the decision "losing money or the like," and fully justify the acquisition of this property.

Again, in the complainants' brief, the following, from the same case, is quoted with entire approval:

"If the five companies which formed the International had been small, and their combination had been essential to enable them to compete with large corporations in the same line, then their uniting would, in the light of reason, not have been in the restraint of trade, but in the furtherance of it; but when they constituted the largest manufacturers of their articles in America, if not in the world, and held jointly about eighty to eighty-five per cent of the trade, and two, at least, of the companies forming the combination were prosperous, their combining was, when similarly viewed, an unreasonable restraint of trade."

By the adoption of this language as a correct statement, the complainants have overthrown their own contention.

It clearly appears from the evidence in this case, as hereinbefore pointed out, that the economies brought about by the acquisition of the properties acquired by the Anaconda Company were absolutely essential to enable these companies to continue to be successful competitors, with a reasonable profit, against the other copper producers of the United States, and that these acquisitions were also absolutely essential in order that the life of the company might be prolonged, and it be enabled to continue to carry out its corporate purposes; and the reasons for these acquisitions pointed out in the testimony are certainly more cogent than the reasons assumed in the excerpt from the Harvester case as being sufficient to render combinations of independent manufacturers and dealers in agricultural implements entirely lawful.

The following excerpt from the same case appears to be greatly relied upon by complainants:

"We think it may be laid down as a general rule that if companies could not make a legal contract as to prices, or as to collateral services, they could not legally unite, and as the companies named did in effect unite, the sole question is as to whether they could have agreed upon prices and what collateral services they could render when their companies were all prosperous and they jointly controlled eighty to eighty-five per cent of the business in that line in the United States."

It is unnecessary to inquire at length as to the technical accuracy of this statement. Taken in its entirety it is not pertinent to the case at bar.

We shall not attempt to determine when companies may unite on prices, but we assert that it has been determined under exactly what circumstances one company may acquire the property of another; or two or more companies may unite in the operation of their business by the Standard Oil and Tobacco cases, hereinbefore referred to, and while this statement might have the effect to extend the application of the rules therein set out to the case of an agreement on prices, it cannot have the effect of limiting, modifying or changing the rules therein announced in reference to acquisition of property. We think, however, that the statement is unsound, and for the reason, among others, that it has been thoroughly demonstrated by the authorities that one company may acquire the property of another, or two or more companies may unite, when the main and direct purpose is to prevent the losing of money, to continue the life of the organization and its business, to put in force economies which enable it to compete with others more advantage-

ously situated, although the indirect effect of such acquisition or combination may be to restrain commerce or raise the price of the article sold, whereas, any agreement to raise prices, between companies, must necessarily have for its purpose a direct effect upon trade and commerce, and might therefore bring about the evils condemned by the Act.

While we find nothing in the *Harvester* case which, in our judgment, controls the case at bar, we may be permitted to say that the quotations made from that case by the counsel do not appear to have been the opinion of the court. Three opinions were prepared and handed down. All the excerpts from the case are from the opinion of Judge Smith, who wrote the leading opinion in the case. Judge Hook handed down an independent opinion in which he makes no reference whatever, either of approval or disapproval, to the reasoning of Judge Smith, except upon one point, and this one point is in fact the only point of concurrence among the three judges who decided the case, and that point is that the combination of dealers and manufacturers of agricultural implements, controlling from eighty to eighty-five per cent of the entire product of the United States, and located in different states, engaged in interstate commerce, necessarily, on account of its magnitude, resulted in a restraint of trade between the States.

Judge Sanborn, for whom both the lawyers and the judges of the country have long entertained a profound respect, dissented. But it clearly appears from that case that if this case were being considered upon the same principles, as was the *Harvester* case, the case would not be ruled adversely to appellants thereby, and this may be conclusively developed and demonstrated in a few words. In

the Harvester case, the combined companies from the outset, controlled from eighty to eighty-five per cent of the entire production and trade in agricultural implements. It appears from the opinion of Judge Smith that that percentage was afterwards increased, to exactly what extent cannot be ascertained. The decree of the Court in reference to the dissolution of this combination is as follows:

"It will therefore be ordered that the entire combination and monopoly be dissolved, that the defendants have ninety days within which to report to the court a plan for the dissolution of the entire unlawful business into at least three substantially equal, separate, distinct and independent corporations, with wholly separate owners and stockholders."

The Court will observe that after the combination was divided into three distinct, separate, equal corporations, each of these corporations would be in absolute control, upon equal terms, with every other corporation, of practically thirty per cent of the entire agricultural implement product of the United States; so re-organized, the Court deemed each organization lawful and not in contravention of the Anti-Trust law.

In the case of the Anaconda Copper Mining Company, with all of its acquisitions, it now, and at all times for many years past, has only controlled a fraction over twenty-one per cent of the entire copper production of the United States, and each year it controls proportionately less, and the Court also knows, from the testimony, that this production is carried on under conditions greatly adverse to those enjoyed by the great bulk of the copper producers of the United States in its production. Furthermore, the copper production of the

Anaconda Copper Mining Company, and all the copper production of the United States, has strong competition from the copper mines of Mexico and other countries of the world, whereas, the market in the United States for agricultural implements is essentially confined to those produced therein. Thus, the final result of the International Harvester Company case is a direct authority which, if allowed, would lead to a denial of the relief insisted on by the complainants.

But it is said that it is not essential that either the Amalgamated Copper Company or the Anaconda Copper Mining Company shall have brought about any of the evils against which the Anti-Trust law is directed, but that if either of them have the power on account of the magnitude of their holdings, to restrain trade or commerce, that they therefore become inimical to the law, and subject to dissolution, which dissolution is now sought in part at least by complainants in this case by taking away from the Anaconda Company the Alice properties. That which does not exist of course cannot be dissolved, and although the Anaconda Company might threaten a monopoly, this, of course, could be effectually restrained without its disintegration. But we assert that nothing appears in the evidence showing that either the Amalgamated or Anaconda Company has the power, on account of the magnitude of its holdings, to create a monopoly, either in whole or in part, of the trade in copper, or that either ever attained that preponderating influence in the copper business which is essential before it can be held to have violated or threatened violation of the law.

All authorities agree that any combination to be

violative of the Sherman Anti-Trust law must have obtained control of at least a preponderating part of the commerce in some particular article. The word "preponderating" may not mean the same in every case, but in the absence of some exceptional or extraordinary circumstances, such as the control of transportation facilities, or a monopolization of a raw product out of which the article is produced, or the like, none of which appears in the instant case, then preponderating influence can only be obtained by the engrossment of more than the major part of commerce, between the states, in some particular article.

Neither Amalgamated nor Anaconda can truthfully be said to have had a preponderating influence in the copper commerce of the United States, when the total amount of their copper production is less than twenty-five per cent of the whole, and when they do not, by any trade contracts or control of transportation facilities, or otherwise, control the sale of copper in any geographical division of the country.

Neither can it be said that, controlling less than twenty-five per cent of the copper of the United States, which percentage is constantly decreasing, even though such control were created with an unlawful intent to monopolize interstate trade, the acquisition of the Alice properties, bearing zinc and silver only, would bring about a dangerous probability that either of said companies would ultimately engross a preponderating part of the commerce in copper, without one or the other of which there can be no violation of the Sherman Anti-Trust law.

In an article in the *Columbia Law Review* for

December, 1910, Volume 10, page 687, Mr. Morawetz states that:

"According to common usage in modern times, the phrase 'to monopolize commerce' means by the elimination of competition to secure to some individual or group of individuals control of all or of a largely preponderating part of the commerce in some article."

In the *Standard Oil* case, page 61, in referring to the section against monopolies, the Supreme Court thus interprets the same:

"The commerce referred to by the words 'any part' construed in the light of the manifest purpose of the statute has both a geographical and a distributive significance, that is, it includes any portion of the United States and any one of the classes of things forming a part of interstate or foreign commerce."

In other words, before there can be a monopoly, one of the classes of things, or one product which is in interstate commerce, must be monopolized in some geographical subdivision of the United States. Now, it is perfectly clear that the Anaconda Copper Mining Company has no power to monopolize copper, which is one of the classes of things mentioned, in any geographical subdivision of the United States. Its whole product is sold and must be sold, in every geographical subdivision of the United States, with the other copper producers of the United States, who produce over three-fourths of the product; and also with the copper producers of Mexico and other producers of the world, and neither the Anaconda Copper Mining Company nor the Amalgamated Copper Company has the power, on account of the fact that they produce less than twenty-five per cent of the copper of the United

States, to exclude from any geographical subdivision of the United States the competitors which now exist, and for years past have existed.

The decisions touching combination of competing lines of railway, of course, have no bearing upon this situation. Products shipped in interstate commerce over lines of railway, must be shipped over those adjacent. There is no escape from this. Therefore, a combination between the Great Northern Railway Company and the Northern Pacific would, at every common point touched or served by those lines, necessarily result in a monopoly in all shipments arising from those compelled to ship from such common points. Moreover, we assert that the authorities do not justify the conclusion that the mere possession of power to do an illegal act, or to form a monopoly, either in whole or in part, renders the corporation possessing such power amenable to the Anti-trust law. It is true that there are some expressions in some of the cases from which such an implication might be drawn, but in every instance such expressions will be found to be either absolutely *obiter*, or to have been used in the case that the power possessed by the combination necessarily resulted in a stifling of trade in interstate commerce; that the power, even if possessed, must be either exercised, or that there must be a dangerous probability of its immediate exercise, before the law will be brought to bear upon such a combination or corporation, is so abundantly settled by the authorities that the question is not open to serious controversy.

In Moore on Interstate Commerce, Section 337, it is said :

“The test of an unlawful combination under the Anti-Trust Act is its necessary effect upon free competition in commerce among the states or foreign nations.”

In *Swift Company v. United States*, 196 U. S. page 396, it was said:

"Where acts are not sufficient in themselves to produce a result which the law seeks to prevent—for instance the monopoly—but require further acts in addition to the mere forces of nature to bring that result to pass, an intent to bring it to pass is necessary in order to produce a dangerous probability that it will happen."

Again, in the same case, page 402, it was said:

"Not every act that may be done with intent to produce an unlawful result is unlawful, or constitutes an attempt. It is a question of proximity and degree. The distinction between mere preparation and attempt is well known in the criminal law" (citing cases).

On this point it was said in the *Standard Oil* case, on page 60:

"The statute under this view evidenced the intent not to restrain the right to make and enforce contracts, whether resulting from combination or otherwise, *which did not unduly restrain interstate or foreign commerce*, but to protect that commerce from being restrained by methods, whether old or new, which would constitute an interference that is an undue restraint."

In the same case, page 64, referring to the decision in the case of the *United States v. Freight Association*, and *United States v. Joint Traffic Association*, the Court said:

"As the cases cannot by any possible conception be treated as authoritative without the certitude that reason was resorted to for the purpose of deciding them, it follows as a

matter of course that it must have been held by the light of reason, since the conclusion could not have been otherwise reached, that the assailed contracts or agreements were within the general enumeration of the statute, and that their operation and effect brought about the *restraint of trade* which the statute prohibited. This being inevitable, the deduction can in reason only be this: That in the cases relied upon it having been found that the acts complained of were within the statute and operated to produce the injuries which the statute forbade, that resort to reason was not permissible in order to allow that to be done which the statute prohibited. This being true, the rulings in the cases relied upon when rightly appreciated were therefore this and nothing more. That as considering the contracts or agreements, their necessary effect and the character of the parties by whom they were made, they were clearly *restraints of trade within the purview of the statute*, they could not be taken out of that category by indulging in general reasoning as to the expediency or non-expediency of having made the contracts or the wisdom or want of wisdom of the statute which prohibited their being made."

In the Hopkins case, cited with approval in the Standard Oil case, page 66, the Supreme Court said:

"There must be some direct and immediate effect upon interstate commerce in order to come within the Act."

In the Addyston Pipe & Steel Company case, 175 U. S., page 244, it was said:

"We have no doubt that where the direct and immediate effect of a contract or combination among particular dealers in a commodity is to destroy competition between them and

others, so that the parties to the contract or combination may obtain increased prices for themselves, such contract or combination amounts to a restraint of trade in the commodity."

In *United States v. Union Pacific*, 226 U. S. page 82, the Supreme Court quoted the following with approval from *United States v. Joint Traffic Association*:

"It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all the matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit."

Again, in that case, on page 86, it is said:

"If it is true, as contended by the Government, that a stock interest sufficient for the purpose was obtained in the Southern Pacific Company, with a view to securing the control of that company, and thus destroying or restricting competition with the Union Pacific in interstate trade, the transaction was in our opinion within the terms of the statute."

We have already pointed out the difference in the situation of two combining railroads, serving the same territory, and the combination which is now being discussed. Each independent road is a monopoly to a very large extent in and of itself, and the combination of two roads serving the same territory only enlarges that monopoly. A shipper residing at a common point touched by two rail-

roads only, has no choice except to snip over one or the other. Therefore, if the two be combined, the monopoly of one is extended to the monopoly of the two, and geographically it becomes a complete monopoly, against which, or with which, no other railroad company can possibly compete. It must therefore necessarily restrict interstate commerce.

The distinction is apparent between this situation and the situation of the Anaconda Copper Mining Company selling its products in every geographical subdivision of the United States in direct competition with that of every other producer, both in the United States and elsewhere, and from which territory, or no part of which, any producer or seller could possibly be excluded.

In the Northern Securities Case, 193 U. S. page 331, the Court said:

"The Act declares illegal every contract, combination or conspiracy, in whatever form, of whatever nature, and whoever may be the parties to it, *which directly or necessarily operates in restraint of trade or commerce among the several states.*"

Moreover, there is a distinct difference between public corporations, such as railroads, and private ones, such as mining companies, which is clearly pointed out in

United States v. Freight Assn., 166 U. S. 334.

The case of International Harvester Company v. Missouri, 234 U. S., cited by complainants, has no application. In that case the Supreme Court was construing a statute of the State of Missouri, the most casual reading of which will demonstrate to

have been much broader in its terms and more drastic in its provisions than the Sherman Anti-Trust law. It has already been construed by the Supreme Court of the State of Missouri, and of course such construction was in the main controlling upon the Supreme Court of the United States. The statute of the State of Missouri was directed against, not only restraint of trade and commerce, "but also against all acts which would tend to lessen full and free competition". No such language as this is found in the federal Statute, and it has been expressly ruled not to be so comprehensive.

United States v. E. I. DuPont, 188 Fed. 127.

The O'Halloran case, 207 Federal, 188, is quoted from in complainants' brief as tending to show that power only is essential to render a corporation or combination unlawful. An examination of the case shows that the remarks in reference to power only were not at all essential to its decision, and the statement being *obiter*, the learned judge did not use that precision or accuracy of expression which might reasonably have been expected, had the question been essential. Other portions of the paragraph quoted show beyond question that it was not used in the sense now attributed to it by counsel. Other declarations of the Court show that the rule as contended for by us met its full concurrence. On page 189 it was said:

"So far as the intent of the defendants is involved, they are presumed to have intended the necessary, natural and known effects or consequences of their agreements and acts, and if these effects or consequences be to unduly

restrain interstate trade and commerce, then the combination is illegal and the participants are chargeable with the consequences."

Again, on page 191, the Court said :

"But when those theretofore engaged independently in producing and selling an article combine their money, intelligence and effort for the purpose of limiting the supply and controlling the supply and controlling the prices of such article, and destroying competition, and they interfere with interstate commerce, or their combination is such as in its operation and execution will bring about these results, they have become violators of the statute referred to, regardless of intent."

Certainly mere power would not subject the Anaconda Copper Mining Company to the forfeiture of its property at the suit of a stockholder of the seller; neither would it, upon the suit of the United States. Power, coupled with a wrongful attempt, realizing a dangerous probability, might subject the corporation, at the suit of the government, to the preventive remedy of injunction, but not to a dissolution or to disintegration. It is only when monopoly actually exists and no other remedy is apparent, that the unlawful combination will be dismembered. Upon this point in the Standard Oil Case, on page 77, it was said :

"It may be conceded that ordinarily, where it was found that acts had been done in violation of the statute, adequate measure of relief would result from restraining the doing of such acts in the future. Swift v. United States, 196 U. S. 375. But in a case like this, where the condition which has been brought about in violation of the statute, in and of itself is not only a continued attempt to monopolize, but

also a monopolization, the duty to enforce the statute requires the application of broader and more controlling remedies."

Some pages of Appellants' brief are devoted to a discussion of the testimony of one Lawson, which it is claimed discloses that it was the intent of the original promoters of the Amalgamated Copper Company to form an unlawful combination to monopolize the copper industry of the world. In view of the admission contained in Appellants' brief, and the statement of the grounds upon which they rely, we are unable to understand why they should have called attention to this testimony at all, unless it be that it is thought to be entertaining. In the brief of Appellants' in the Court of Appeals, it is said:

"The intent with which the combination assailed in this case was formed is clear from its history without this direct evidence of the ends sought to be accomplished by its rejectors, but the intent in this case is of very little consequence, the necessary effect of the combination being to place in the Amalgamated the power to restrain trade, the proof of intent to accomplish such restraint is unnecessary. It is only where it does not appear that the 'inherent nature and effect' of the combination is to restrain trade that the proof of intent becomes material" (See page 132).

In view of this admission by appellants it would seem unnecessary to take notice of the testimony of Lawson, as it is clearly herein stated that this testimony has no influence upon the determination of the question of the legality or illegality of the acquisition of the Alice properties by the Anaconda Company. Testimony to establish wrong-doing of this character must be clear, convincing and con-

clusive, and the testimony upon the point of this intention fails to satisfactorily establish it. A reading of the Lawson testimony impresses one with its improbability. Such a scheme as outlined by him would hardly have been entertained by men with business acumen like unto that possessed by Mr. Rogers and Mr. Burrage, his associate. In short, it appeared to be a project to corner all the money in the world and then with that money to buy the big round world itself. The manner of the examination of Mr. Lawson condemns his evidence. A voluntary and willing witness for the complainants, he was persistently led in the examination by references and quotations from public statements made by him for hire through *Everybody's Magazine*, when he was engaged in the business of "muck-raking" during the "muck-raking" era, which happily now appears to have largely passed away. Having been placed in such a situation by the counsel of the parties for whom he appeared, it was the most natural thing in the world that even at the expense of his conscience, he would assert that that which he had so solemnly stated in the public prints was not open to question. Indeed, the situation in which he was trapped would, in the absence of time for deliberation, naturally lead to this result. Aside from the inherent improbability of his statements, he is substantially contradicted by Mr. Burrage's testimony, and by all the circumstances surrounding the organization of the Amalgamated. His statements are rendered further improbable by the utter impossibility of even such powerful financial interests as those represented by Mr. Rogers carrying out the details of the disclosed plan, and fifteen years of unimpeachable conduct upon the part of the Amalgamated

Copper Company and the Anaconda Copper Mining Company, furnish irrefragable proof that his statements in regard to the unlawful intent of the promoters of the Amalgamated are not substantially correct; but even admitting their truth, we are unable to conceive upon what legal principle such an unlawful intent can furnish ground for the rescission of the purchase of the Alice properties. There is positively no evidence that such intent was ever put into effect by an attempt to monopolize, and even if it could be said that such an attempt was made, it must be said that it has proven to be entirely ineffectual; and an ineffectual attempt at combination, with an intent to monopolize, would fall far short upon well known legal principles of furnishing ground for the rescission of the purchase being considered. Neither Amalgamated nor Anaconda ever obtained a preponderating influence in the commerce in copper; neither ever had the power or reached so near attaining such power as to render it dangerously probable that interstate commerce in copper would be monopolized, and each year since the organization of the Amalgamated Company has brought both the Amalgamated and the Anaconda farther and farther away from such a preponderating control of the commerce in copper as would render either corporation objectionable. But there is a further consideration. It will be remembered that the Anaconda Company was a corporation long prior to the organization of the Amalgamated. It owned property, had property rights and thousands of stockholders. Since the organization of the Amalgamated it has acquired a majority of the stock of the Anaconda Company, and we are not advised upon what principle an unlawful intent, entertained

by the promoters of the Amalgamated Company at the time of its organization, and by men, some of whom were never connected with it in any way or had any legal capacity to act for it after it became a corporation, can, ten or twelve years thereafter be imputed to the Anaconda Company, so as to take away from it property which it has purchased, and thus vicariously punish the thousands of innocent stockholders and other persons holding the securities of that company. It is neither law nor logic to punish vicariously or to visit the sins of the parents upon the children even unto the third and fourth generations.

United States v. E. I. DuPont Company,
188 Federal, 127.

This case, as presented by complainants has, in our judgment, never been ruled upon the facts in any other case. To sustain the contention of complainants would make the Sherman Anti-Trust Law so comprehensive in its operation as to render it ridiculous in the extreme. In all other cases which have been the subject of serious consideration by the courts, arising out of the Sherman Anti-Trust Law, there have been controlling facts which do not appear herein. In some there has been actual monopolization by unity of control of competing railroads. In some there has been actual monopolization arising as a necessary consequence of the combination having secured control of more than a majority of the trade in designated articles, and in almost every instance from seventy-five to one hundred per cent thereof. In some there have been actual contracts, dividing territory and restricting commerce. In others, together with these elements, or some of these elements, there have been viola-

tions of law, unjust treatment of competitors, espionage, and other evidence, showing conclusively an illegal purpose and an unlawful intent. In no case has a combination been declared illegal and unlawful simply on account of the magnitude of its investments, without other facts giving to its transactions a criminal color.

In the Standard Oil case, although the Standard Oil Company and its subsidiaries transported more than four-fifths of the petroleum derived from the Pennsylvania and Indiana oil fields, manufactured more than three-fourths of all the crude oil refined in the United States, owned and operated more than one-half of all the tank cars used to distribute its products, marketed more than four-fifths of all the illuminating oil sold in the United States, exported more than four-fifths of all the illuminating oil sent forth from the United States, sold more than four-fifths of all the naphtha sold in the United States, and sold more than nine-tenths of all the lubricating oil sold to railroad companies in the United States, the Supreme Court did not base its decision adverse to that Company upon these facts, but upon its destruction of the potentiality of competition, and upon its methods of business adapted for the purpose of excluding others from the trade, and upon its acts and dealings done with the intent to drive others from the field and to exclude them from their right to trade.

Likewise, in the American Tobacco Company case. That Company produced from 70 to 96 per cent of the various kinds of tobacco products in the United States, but the decision was based upon the business methods used by it to drive competitors out of business.

Likewise, an examination of all other cases de-

cided by the Supreme Court of the United States will disclose that no decision has ever been based alone upon the magnitude of the investments of the offending corporations, but other elements have been made the basis therefor; and never has it heretofore been asserted that control by one Company of less than one-fourth of an article of commerce in the United States would subject the offending corporation to any of the penalties of the Sherman Anti-Trust Law. We therefore say it is not ruled upon the facts by any precedent so much as it is ruled by reason, and when viewed in the light of reason, as it must be, the contentions of the complainants "vanish into thin air".

It will be hardly conceived upon what principle the purchase of a silver and zinc property by the Anaconda Company, a company controlling less than twenty-five per cent of the commerce in copper within the United States, would tend to defeat competition in the copper markets of the world, and therefore could be set aside and rescinded by a dissenting stockholder of the seller. The simple statement of the proposition bears upon its face its own refutation.

From the foregoing, we confidently assert that the decree of the Court below should have gone unconditionally in favor of the Appellees; that there should have been no interlocutory decree; that the errors of the Court touching its findings of fact, as well as its conclusions of law, detrimental to the rights of the Appellees in this case, should be now corrected; and without further consideration as to the regularity of the proceedings had before the entry of the interlocutory decree, or their due authorization by the principles of equity, the final decree of the Court below should be affirmed.

THE INTERLOCUTORY DECREE WAS RIGHT.

I.

Although the Findings of Fact made by the Court be not disturbed, and be held by this Court to be justified by the testimony in the case, the decree of the Court is nevertheless correct and should, in all respects, be affirmed.

The Court framed its interlocutory decree largely upon the theory of the case of *Pewabic Mining Company*, 133 U. S., 50. In this connection the learned Court below said:

"The instant case in principle resembles *Mason against Pewabic Mining Company*, 133 U. S. 50. The difference between them is also of degree only. For a proposed sale of all property of a corporation in process of dissolution by the majority to a new corporation, by them organized and for its stock to be distributed to the former's stockholders, is substantially like an executed-like sale for like consideration and purposes by a majority of a corporation contemplating dissolution to another corporation in which they are interested, so far as the rights of minority stockholders are concerned.

"The rule of the *Pewabic* case is that any stockholder can insist that any sale of all corporate property upon dissolution shall be to the highest bidder for cash, and not to a corporation in which the majority are interested and for its stock at prices fixed by them.

"In the matter of relief to be granted, it

appears plaintiffs own 12,560 shares of Alice of 400,000 shares outstanding. At the time of sale Butte Coalition owned about 234,000 said shares. The sale was ratified by 289,590 shares, and opposed by 5,500. * * * In any event, at least 34,000 shares of Alice are owned by others than the parties hereto and Amalgamated. A court of equity will model relief so that all parties in interest, whether before the court or not, will be protected. As before stated, the majority could lawfully sell Alice. The minority's right was a fair sale for money to the end that each thereof received in money the value of his equity in Alice property. Their present right is to sufficient relief to still accomplish that end.

"The sale is not to be unconditionally set aside, however, for unless the property can be sold for more the interest of all the parties hereto and of those stockholders who neither appeared nor complained, require it shall not be disturbed. The method of the Pewabic case will be followed as near as may be. The value of the Anaconda stock paid for Alice was \$1,500,000. Some \$300,000 dividends thereon have since been paid. What was the amount of debts and obligations of Alice assumed by Anaconda does not appear. The decree will provide that a re-sale will be made and provided when made if no bid greater than the total proceeds to Alice as above be made, and provided thereupon defendants pay to plaintiffs and all those entitled thereto the money value of their equity in the proceeds of the sale heretofore made; that is, their proportionate share of the market value of the Anaconda stock at the time of the sale and of the dividends thereon, no re-sale will be made and the sale involved will be undisturbed. Thereby defendants will gain no advantage, plaintiffs will suffer no loss, and all Alice stockholders will receive their just dues" (Tr., Vol. I, pp. 187, 188, 189).

The Court of Appeals, in its decision affirming the correctness of the procedure provided for in the interlocutory decree of the court below (Tr., Vol. II, p. 989) said:

"It cannot be denied that the majority of the stockholders of the Alice Company had the right to sell the corporate property. After the sale, and at a meeting regularly called and held under the authority of the laws of Utah, the requisite number of the stockholders passed a resolution directing that the corporation be dissolved, its affairs wound up, and its assets distributed. The appellants had no power to prevent dissolution against the will of the majority. Nor had they the right to say that a sale should not be made to the Anaconda Company, if that Company outbid others. They had, however, the right, and that right the court below secured to them, to have the property sold free from the effect of any unfair combination between the majority stockholders and the Anaconda Company. The Court below followed the rule of *Mason v. Pewabic Mining Company*, 133 U. S. 50, which holds that any stockholder can require that upon dissolution the corporate property shall be sold to the highest bidder for cash, and not to another corporation in which the majority stockholders are interested, and on terms fixed by them. There is no essential difference in principle between that case and this, and no substantial difference in the facts. The only difference is that in the *Pewabic* case the minority stockholders were in court insisting on their right to a sale at public auction, while in the case at bar the minority assert that no sale whatever should be made. Upon the law and the facts they are in no position to prevent a sale, nor to thwart the purpose of the majority to sell to another corporation. When they subscribed to their stock, they assented to the laws of Utah governing the distribution of assets of corporations, and they

must abide by them. Nor is any relevant distinction to be found in the fact, as asserted, that in the Pewabic case the corporation had ceased to exist, while in the present case the corporation was still in existence. It is true that the charter of the Pewabic Mining Company had expired, but under the laws of Michigan it continued to be a body corporate, for all purposes except that of continuing in business, and among the permissible functions of its continued existence as prescribed by law was that of winding up its affairs, disposing of its property and dividing its capital stock. * * * The majority of the stockholders have rights which the court must recognize and protect. They have the right to retain the benefit of the sale already made unless a sale for a higher price can be made. This was the protection afforded the majority stockholders in the Pewabic case, and it is here afforded by the decree of the court below."

Both courts found, as a matter of both law and fact, that Alice stockholders had the right to sell Alice property. They further found, and it is undisputed, that at a meeting of said stockholders, properly noticed and held, it was voted to sell Alice property, and not only was it voted to sell the same, but a purchaser was found therefor and the terms of sale agreed upon. It was also found by the Court that the sale of the Alice property was authorized in pursuance of a plan touching the ultimate dissolution of the Alice Company. The only vice the Court found in the former sale to Anaconda was that there was doubt as to whether an adequate consideration had been obtained for the physical properties of the Alice, and that under the circumstances there should have been, if possible, a sale for cash. It was further held that upon final dissolution stockholders were entitled to receive their *pro*

rata share of the assets in cash, if they so elected, instead of being compelled to take their share of the property of the Company in kind.

It should also be borne in mind that not only had the Alice stockholders authorized the sale of Alice property, but they had gone further, under authority granted them by the laws of the state of Utah, and at a meeting regularly called and held the requisite number of the stockholders of the Alice Company had passed a resolution authorizing and requiring the dissolution of the Alice corporation, the winding up of its affairs, and the distribution of its assets. Proper proceedings for dissolution, under the laws of the state of Utah, were, according to the allegations of complainants' bill, and according to the testimony in this case, pending at the time they were thwarted by the suit of the complainants. The legality and regularity of these proceedings have not been, and cannot be, questioned.

This dissolution necessarily involved and carried with it the sale of all of Alice property, except where stockholders elected to take their *pro rata* share of the stock held by Alice in kind, and the distribution of the proceeds thereof to the stockholders.

It is true that the complainants, representing an almost negligible percentage of the stock of the Alice Company, opposed, as stated by Appellants in their brief, the sale of this property upon any conditions whatsoever; but while they might have a right to oppose a sale of it in the manner and under the circumstances attending the first sale to the Anaconda Company, they never have had at any time any standing in court to prevent the Alice Company, through proper corporate and stockholders' action, from selling said property free from the

alleged vice of unity of control and inadequacy of consideration, or to prevent a majority of its stockholders from selling the same to the Anaconda Company, provided there was no purchaser who would pay a larger price. Neither have they ever had any standing in court to prevent the dissolution of said corporation, regularly resolved upon by its stockholders, which dissolution necessarily carried with it a sale of all its properties and a distribution of its assets. The right of the majority of the stockholders of the Alice Company to sell all its property, and the right to sell the same to the Anaconda Company, under proper circumstances, it was the duty of the Court to maintain and respect in its decree, notwithstanding the objection of those dissenting, because this right was given to the majority stockholders by the laws of the state of Utah. Likewise it was the duty of the Court to respect, in its decree, the right of the majority of the stockholders of the Alice Company to dissolve the corporation and distribute its assets, and before the institution of this suit effectual steps had been taken to obtain these results.

The right to sell, and for adequate consideration to sell to the Anaconda Company, as well as the right to dissolve, were inviolable rights vested in the Alice Company, to be exercised through a majority of its stockholders, which it was the duty of the court to protect in its decree. The rights of the majority were, and are, equally as sacred as the rights of the minority. For the Court to have unconditionally set aside the sale would have denied these rights to the majority of the stockholders of the Alice Company. It would have required the Alice Company to undo what it had already legally done in pursuance of these lawful purposes. It

would have left undetermined and unenforced the rights of either. Before the majority could have made further progress in the accomplishment of these legitimate purposes, they would have to do over again the things already done, and once more submit to the Court the question as to in what manner these indubitable rights of the majority of the stockholders of the Alice Company to sell and dissolve might be carried out. A result wholly inconsonant with the rules of equity or the jurisdiction of its courts.

The minority stockholders therefore had no right to prevent the sale of all its properties by a majority of its stockholders, nor to prevent their selling the same to the Anaconda Company, provided a better price could not be obtained from others. Neither had the minority any right to prevent the majority of the stockholders from dissolving the Alice Company and distributing its assets. The only right vested in the minority was to have the property offered for sale and sold free from any unfair bargaining on account of unity of control between the Alice and Anaconda companies, and to have their portion of the assets of the Alice Company converted into cash and distributed to them.

Complainants make an ineffectual effort to distinguish the Pewabic case from the instant case, but unquestionably the principles of law controlling the two cases are identical. The Pewabic Mining Company was organized on the 4th day of April, 1853. By the laws of the State of Michigan the life of the corporation was thirty years, thereby its charter expired on the 4th day of April, 1883; but although its charter expired upon said date, it was provided by the laws of the State of Michigan "that all corporations whose charters shall expire by

their limitation * * * shall nevertheless continue to be bodies corporate for the term of three years after the time they would have been so dissolved, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their concerns, dispose of and convey their property, and divide their capital stock, but not for the purpose of continuing the business for which such corporations have been or may be established". The corporation continued its business until the 26th day of March, 1884, but this is not material here. On the 26th day of March, 1884, within the period of time granted by the statutes of the state of Michigan within which said corporation could wind up its business, a resolution was passed by more than two-thirds of the stockholders of said Company, providing for the sale of its physical properties to another corporation for the sum of Fifty Thousand Dollars and the taking of stock in payment thereof, such stock to be distributed among the stockholders of the Pewabic Company; such of its stockholders as might refuse to take the stock of the new corporation, to receive their *pro rata* share of the consideration in money.

When it is remembered that in the case of the Alice Company a majority of the stockholders had sold its physical properties, under authority granted them by the common law, their charter and the statute of Utah, to the Anaconda Company for the stock of that corporation; and when it is remembered that exercising their indubitable right, under the laws of the State of Utah, proper proceedings had been taken by more than two-thirds of the stockholders of the Alice Company to dissolve the same, wind up the affairs and distribute

its assets, the analogy between the two cases becomes instantly apparent, and that they are ruled by identical principles cannot be controverted. Both Pewabic and Alice were legally undergoing a process of dissolution.

The distinction attempted to be drawn by Counsel, that because in the Pewabic case a minority of the stockholders were insisting upon a sale at public vendue, and in this case a minority of the stockholders were insisting that no sale whatever shall be made of the Alice properties, is altogether unfounded, for the reason, among others, that the court below correctly found that the majority of the stockholders of the Alice Company had the right to sell, and had sold, the physical properties of that Company; and for the reason that it clearly appears, as hereinbefore stated, that more than two-thirds of the stockholders of the Alice Company had voted to dissolve that Company, such dissolution carrying with it the sale of the properties of the Company and the distribution of its assets, and their legal right to so dissolve the Company is admitted.

An unfounded contention, therefore, of the minority stockholders does not in the least alter the principles governing this case, as those principles are laid down in the Pewabic case; and while the minority stockholders in the Pewabic case were insisting on a sale at public vendue, which was their right, the majority stockholders of the Pewabic Company were insisting that no such sale should be made. Here the majority stockholders are insisting upon a sale of the property, which is their right, and the minority object, without right, to such sale. Courts will protect equally the legal rights of stockholders, whether they represent a majority or a minority.

While the Court cited the *Pewabic* case as authority for its interlocutory decree, it is not necessary that there should be a complete analogy between that case and this for the decree to be sustained. The *Pewabic* case might be laid aside altogether, and yet the decree is firmly grounded upon well-recognized equitable principles. These principles are given full force and effect in the *Pewabic* case, and have likewise been given full force and effect in other cases.

Alice minority stockholders objecting to the sale to the Anaconda Company, submitted their rights, as well as the rights of the majority stockholders, to the determination of a court of equity, invoking its judgment thereon, and the Court would have been derelict in its duty if it had not so framed its decree that it would be effectual to protect the rights of both. In 16 Cyc. 478, it is said:

"Equitable relief may be adapted to the circumstances of the case. There is no limit to the variety of decrees in this regard. While certain equitable remedies are called for with sufficient frequency to create definite rules for framing the decrees in such cases, in order to accord the appropriate relief, these categorical remedies do not limit the scope of decrees. While equity will not do that which is only a hardship to defendant, and of no benefit to plaintiff, still where plaintiff clearly establishes his right, the court must award the appropriate relief without considering inconvenience to defendant. It is of course impossible to specify what relief may be awarded outside of the well-defined and common equitable remedies, but it may be said in general that the court will adjust the relief in such a way as to afford fair protection to the rights of all parties."

In *Wheeler et al. v. Abilene Nat. Bank Bldg. Co.*, 159 Fed. 391, the principle contended for in this case was applied. In that case the whole of the property of the Abilene National Bank Building Company was sold by the directors of the Company to one Southworth, who was the President and director, and the owner of a large majority of the shares of the corporation. The other directors of the Company were "dummy" directors, holding one share each, which had been supplied them by Southworth to qualify them to act as directors. The corporation owed Southworth, but its property was of greater value than the amount of the debts. At a meeting of the stockholders, the requisite number of shares, including those owned by Southworth, were voted to confirm the sale. Upon suit for rescission by a minority stockholder it appeared that the property could have been sold for a substantially larger amount. That some four months prior thereto the minority stockholder had offered to pay more, and that he had asked, but had not been given, an opportunity to bid upon the property. The Court, speaking through Sanborn, all concurring, held the sale voidable, but not void, and only conditionally rescinded the same as follows (p. 395) :

"The sale, however, is voidable, not void, and the court below may require a complainant who seeks equity to do equity. The decree below is accordingly reversed, and the case is remanded to the Circuit Court, with directions to enter an interlocutory decree to the effect that the sale to Southworth be avoided, and the property be sold by a master, on condition that, within 60 days after the entry of the interlocutory decree, the complainants, or one of them, offers to pay for the property and

deposits with the clerk of the court \$3,000, to be applied in payment for the property at the master's sale in case no one offers more, and in case the depositor proves to be the highest bidder, otherwise to be returned to him, and in case such a deposit is made to enter a decree for the sale of the property by a master, for a proper accounting, and for such other relief as may be proper, and in case no such deposit is made to enter a decree of dismissal of the bill for failure to comply with the condition specified; and it is so ordered."

The case of *Koehler v. St. Mary's Brewing Co. et al.*, 77 Atl. 1016 (Pennsylvania), is likewise in point. In that case the board of directors and a majority of the stockholders agreed to sell all of the property of the corporation to another corporation, and agreed to take in payment therefor bonds of the purchasing corporation, falling due thirty years from their date. On a suit brought by dissenting stockholders to enjoin the execution of the sale the Court held such a sale to be illegal, for in that the same was not substantially made for cash. It was not until the reargument of the case in the Supreme Court that the defendant, while still insisting that the minority stockholders should be compelled to take the bonds of the purchasing company, offered to pay to them their *pro rata* share in cash. The court compelled the minority stockholders to accept this offer or suffer the dismissal of their bill. On page 1019 it said:

"On the reargument of this appeal counsel for appellees stated that, while they still insisted that the appellants should be compelled to take the bonds of the Elk County Brewing Company, they were willing to have the decree dismissing the bill affirmed upon condition that the appellants be paid cash for their pro-

portionate shares of the purchase price. This was very prudent, and the decree is affirmed, upon condition that the appellees pay, or cause to be paid, to the appellants, within 60 days, cash for their respective interests in the purchase price of \$250,000, for the sale and transfer to the Elk County Brewing Company of the franchises and corporate property of the St. Mary's Brewing Company, the costs below and on this appeal to be paid by the appellees."

In *Bowditch v. Jackson Company*, 82 Atl. 1014, 1018, the Supreme Court of New Hampshire said:

"The claim is also made that a purchase by the Jackson Company of Nashua Company stock is *ultra vires* and voidable. But the substance of this transaction is not a purchase of stock by the Jackson Company. That Company is to be dissolved, and in the process of dissolution the proceeds of its property are to be divided among its shareholders. The Nashua Company pays \$585,000 for the property. Those who desire to receive payment in stock can do so, and cash will be paid to those who do not wish to invest in the stock. So far as the Jackson Company takes the stock at all, it is merely to transfer it to those who elect to take it, or to sell it for the guaranteed price and pay the proceeds to those who wish to receive money instead of stock. If the form of the agreements and offers, taken as a whole, infringes the rule here invoked, the substance is not open to such objection. In such a case equity ought not to interfere."

There is no pertinency in the objections urged in appellant's brief to the decree of the court ordering a sale of this property at public vendue. If it was the duty of the Court to offer the property for sale, in what other manner should it have sold the same. Having the right to offer the property for sale, in

order to protect the rights of all the stockholders, and particularly the rights of the majority to dissolve the Alice and to dispose of all its physical properties, the Court was bound to offer the property in a manner consonant with like proceedings in courts of equity. That there is no other known method by which the property could be disposed of is clearly apparent from the many authorities cited in the *Pewabic* case; and complainants having submitted their rights to the Court cannot interpose any objection to the method of sale, so long as such method is consonant with the proceedings of courts of equity. And the fact, if such be a fact, that at such a sale the property might not bring as much as it might under some other method, furnishes them no reason for complaint.

The Court could not direct the complainants in this case to undertake a private sale of the property. This would have deprived the corporation and the majority stockholders of its and their rights in the premises; besides it would have availed nothing. Since the year 1910, up to the final decision of this suit, the minority stockholders of the Alice had full opportunity to produce a purchaser for this property, who would give more than had been given for it by the Anaconda Company. The Court could not have directed the Alice Company, through its officers and a majority of its stockholders, to secure a purchaser for this property other than the Anaconda Company. Courts do not commit the execution of their judgments and the carrying out of their decrees to the tender mercies of either of the parties to a litigation of this character; but they commit the sale of property, when such must be made, to an impartial officer, and direct a public

sale, upon due notice, as the method best calculated to obtain the best price.

It is further stated that complainants were unable to bid themselves for this property; that they had not the means to enter the competition. This statement, of course, finds no basis of fact in the record. Whatever evidence there is touching this point shows that the Walkers, and the interests controlled by them, were wealthy and powerful interests, amply able to bid upon this property if they had considered it a desirable purchase. In addition thereto, from 1910 until the date of the sale, the complainants had every opportunity to procure a purchaser for this property and have him standing ready to buy the same when it should be offered for sale, if such a purchaser could be found. But all this is of no consequence. The stockholders of the Alice having the right to sell this property, and the right to dissolve the Alice Company, were not compelled by any known rule of either law or equity to refrain from doing so, neither was the court compelled to refrain from doing so, until the complainants should become financially able to purchase the same or sufficiently active and influential in the financial world to secure some one who would purchase it.

It is also said that no one could be found at this time who would bid more than a million and a half dollars for this property; that the Anaconda Company was in a more advantageous position to develop this property and make it profitable than any other company; that it could afford to pay more than any other person.

When seeking to set aside the sale to Anaconda, according to complainants, the consideration is totally inadequate; when seeking to prevent a sale

at all, under the order of the Court, the consideration is sufficiently large to prevent any competitors from bidding upon the property. These different viewpoints of counsel, taken to meet the exigencies of each situation, are certainly quite antagonistic to each other.

But upon what known rule of either law or equity can it be contended that the conceded right of the Alice Company and its stockholders to dissolve the corporation, to sell and dispose of its physical properties, and to sell to Anaconda under certain circumstances, and the duty of the Court to protect these rights in its decree, shall be made subservient to the matters contained in these suggestions. Likewise, the Alice Company could not be compelled to hold its physical properties indefinitely because a timid investor might apprehend an appeal to the Supreme Court of the United States upon the suit then pending, or because the Anaconda Company desired control of this property, and was big enough financially to secure the same, or because other purchasers might consider themselves unwelcome in the Butte Camp, or because of any of the reasons assigned in appellants' brief.

The right to sell and to sell to Anaconda, and the right to dissolve the Company and the right to distribute its assets were rights granted by the State of Utah, and vindicated in the opinion of the learned courts below, and these rights could not be made to abide a change in conditions which assured to the minority stockholders that a greater sum than that paid by the Anaconda Copper Mining Company could be secured for the physical properties of the Alice Company. If such were the case, any minority stockholder of the Alice Company could forever prevent the Alice Company from being dis-

solved or from disposing of its property, for not even the complaining stockholders can look forward with any assurance to a definite time when they would be able to bid for this property or willing to do so, or successful in obtaining a purchaser therefor willing to bid more than that which was bid by the Anaconda Company, or when the situation of the Anaconda Company in relation to the Alice property would not be relatively the same as it was at the date of the purchase, or when the Anaconda Company would not have a perfect right to raise the bid of any bidder therefor, or when some dissenting stockholder might not institute litigation touching the sale of the property which might terminate in an appeal to the Supreme Court, or when it might not be unjustly charged, without any basis in the testimony, that any new-comer in the Butte camp would be regarded as an interloper.

We respectfully submit that the decree was in all respects correct; that it protected every right which the law gave to the complainants. It gave them every opportunity to either purchase or secure a purchaser, at an advanced price, for the Alice properties. It provides a means by which they were entitled to have the assets of the Alice Company distributed to them in cash instead of in stock of another company; and it also protected the rights of the majority of the Alice stockholders to sell all the property of the Alice Company, and to dissolve the corporation and to wind up its affairs. All the minority stockholders could possibly ask for was a full and fair opportunity to find a purchaser for Alice properties who would pay more than Anaconda. This full and fair opportunity was given to them. They absolutely failed. No purchaser could be found. For the Court, under

these circumstances, to have unconditionally set aside the sale of the property to Anaconda, and to have forbidden the majority of the Alice stockholders to sell the property to Anaconda, would have been to indefinitely suspend the authority which the majority of Alice had to dispose of the property, and would have been a gross wrong to the Alice Company, and the majority stockholders thereof, and would have been saying in effect that the rights of the Alice Company and the majority of its stockholders should be forever subservient to the claimed rights of the minority to control and regulate its affairs.

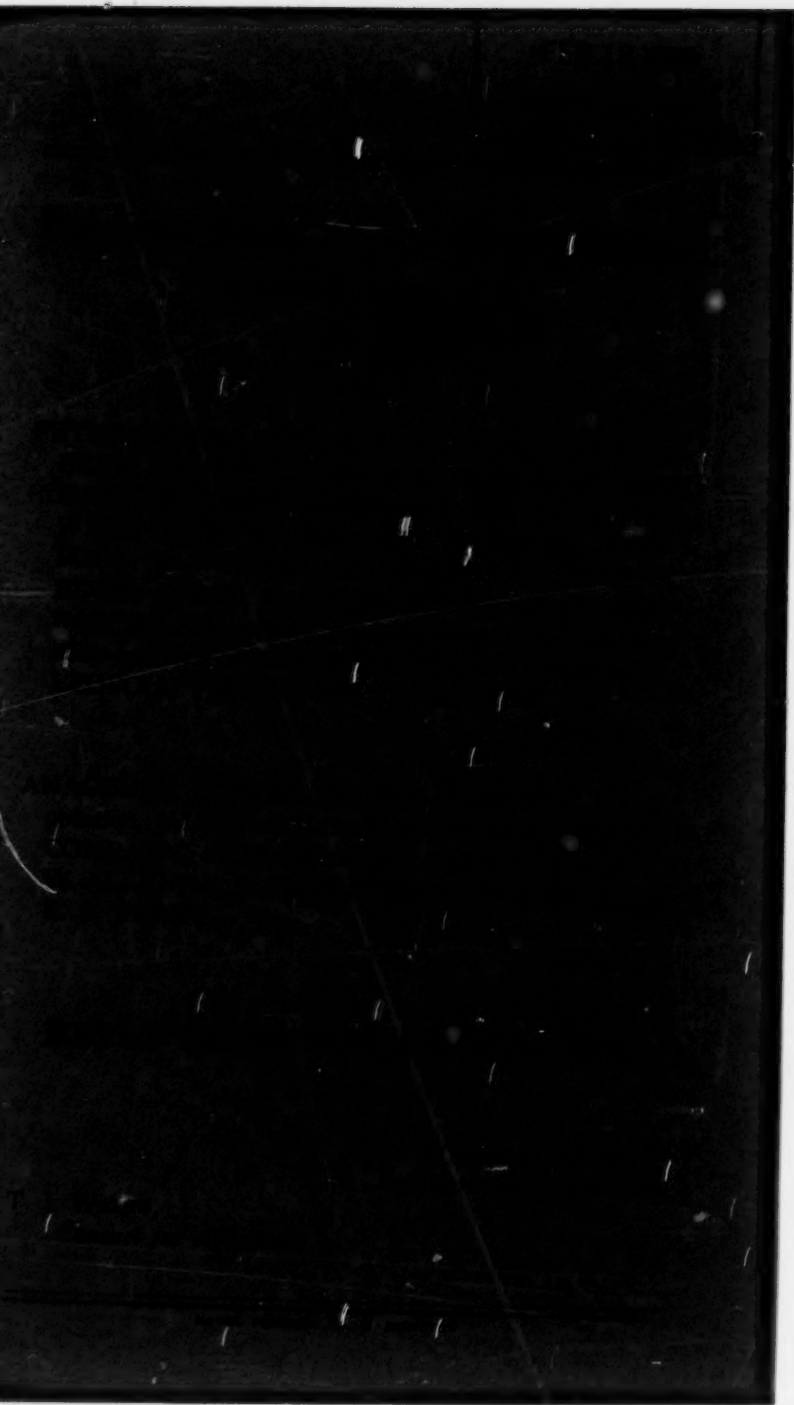
The decree is expressly authorized not only by the general principles of equity, but by the decision in the Pewabic case, and ought, in all respects, to be affirmed.

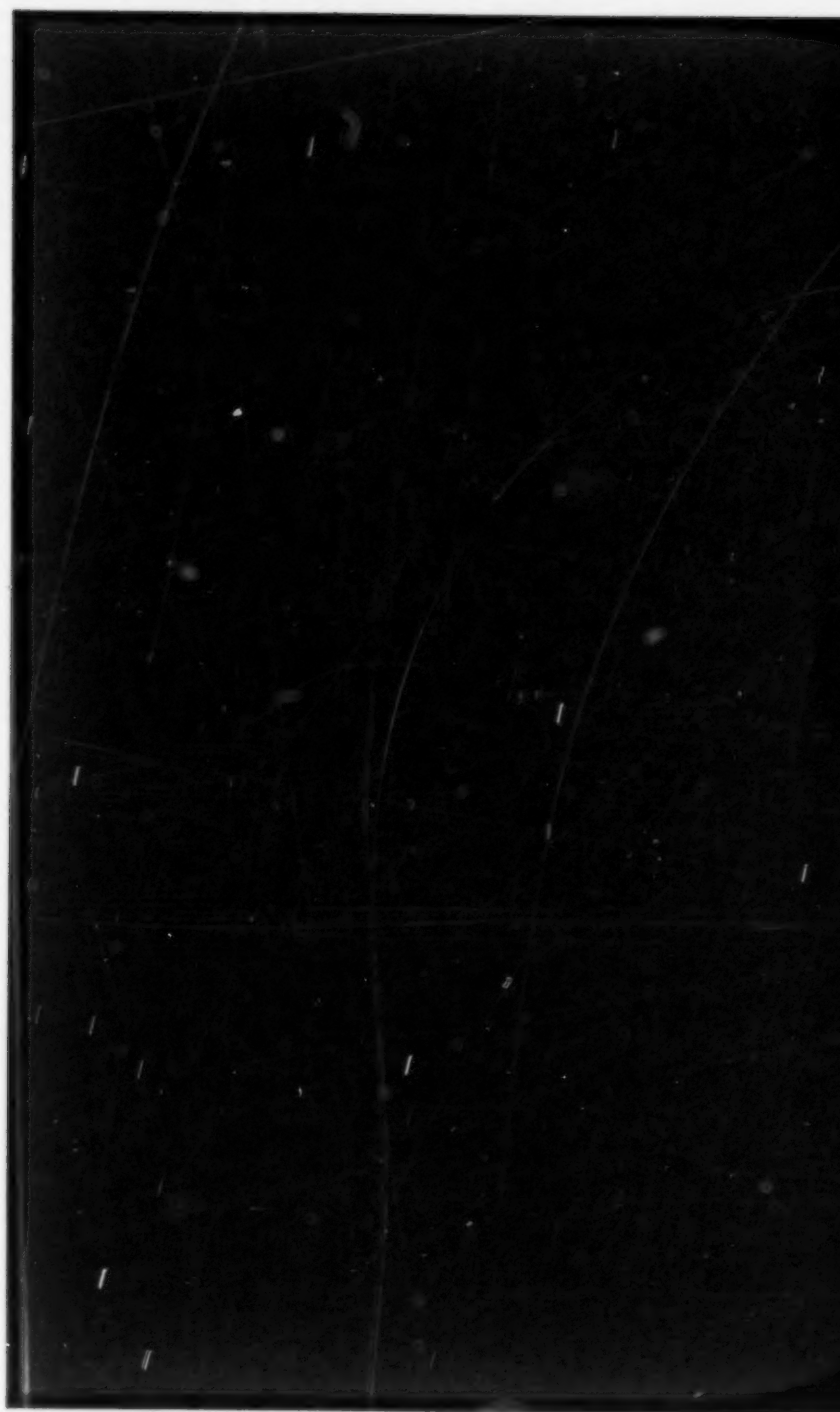
Respectfully submitted,

L. O. EVANS,

W. B. RODGERS,

Residing at Butte, Montana, Solicitors for
Appellees.





SUBJECT INDEX.

	PAGE
I. Just Compensation Denied by the Decree....	2
II. Inaccuracies in Appellees' Brief.....	3
III. <i>Mason v. Pewabic Mining Company</i>	10
IV. Corporations Authorized to "Deal In" Prop- erty	14
V. Is the Equitable Remedy of Cancellation Available?	15
VI. <i>Wilder Mfg. Co. v. Corn Products Rfg. Co.</i> , 236 U. S., 165	17

CASES CITED.

<i>Bowditch v. Jackson Co.</i> , 82 Atl., 1014.....	12
Brice on <i>Ultra Vires</i> (3d Ed.), 696.....	17
<i>Foster v. Commonwealth</i> , 8 Watts & S., 77, 79...	19
<i>Garvey v. St. Joe Mng. Co.</i> , 91 Pac., 369.....	15
<i>Koehler v. St. Mary's Brewing Co.</i> , 77 Atl., 1016..	11
<i>Kohl v. Lelienthal</i> , 81 Cal., 378; 6 L. R. A., 520..	12
II Lindley on Mines, 642-643 (3d Ed.).....	4
<i>MacGinniss v. Boston & Montana Mng. Co.</i> , 29 Mont., 428	8
<i>Morris v. Elyton Land Co.</i> , 28 So., 513-516.....	17
<i>Wheeler v. Abeline Nat. Bank Bldg. Co.</i> , 159 Fed., 391	11



Supreme Court of the United States

OCTOBER TERM, 1919

No. 36

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, MARGARET ANN MEEHAN, EUGENE BLUM, ISAAC BLUM, EDWARD BLUM, ISADOR BAER, ALPHONS DREYFOOS; and ALPHONS DREYFOOS, EUGENE BLUM, DAVID C. GOLDENBERG and EUGENE BASCHO, Co-partners doing business under the firm name and style of DREYFOOS, BLUM & COMPANY; LEOPOLD FREUND and ALICE FREY,

Appellants,

v.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and JOHN D. RYAN, J. W. ALLEN, W. D. THORNTON, A. C. CARSON, and E. S. FERRY,

Appellees.

REPLY BRIEF FOR APPELLANTS

WALSH & NOLAN,
Solicitors for Appellants.

T. J. WALSH,
Counsel for Appellants.

The appellants submit herewith some fragmentary comments suggested by the brief filed and the argument made on behalf of the appellees herein.

I. JUST COMPENSATION DENIED BY THE DECREE.

In the introductory part of the original brief of appellants (p. 7) reference is made to some incongruities between the decree made in the District Court and affirmed in the Circuit Court of Appeals, and the opinions of those courts respectively upon which the ultimate conclusion of each was based. The attention of this court is directed to another even more glaring.

Both of the lower courts held that the price paid by the Anaconda for the Alice properties was inadequate. But notwithstanding that finding, the sale was affirmed, though the right was accorded to any of the appellants, at their election, to surrender their Alice stock and take respectively in lieu thereof such proportion of \$1,500,000 found to be the value of the 30,000 shares of Anaconda stock, as the number of shares held by the electing appellants bears to the total number of Alice shares—400,000. In other words, they might retain their Alice stock, enjoying their proportionate interest in the 30,000 shares of Anaconda stock found to be of less value than the property exchanged for it, or they might have the same proportionate share of \$1,500,000, found to be less than the fair value of the property in which they were interested as stockholders, and which was by the sale and the decree passed to the Anaconda.

Let it be borne in mind that the dissenting stockholders are not to have the fair value, the cash equivalent of the property, of which the Alice was by the sale and the decree divested. The decree is explicit on this point.

Record, Vol. I, pages 140-151.

That is, the interlocutory decree is explicit. By the final decree the sale is affirmed absolutely and without qualification or condition (Record, Vol. I, pages 152-155).

Whether that decree is to be construed in the light of the opinion of the court and the interlocutory decree as carrying the right of election, or whether it must be held that the right was, on further consideration by the court, withdrawn, is a matter of interesting speculation. In either case the appellants are required to surrender their interest in the Alice property upon a consideration adjudicated to be inadequate.

That obviously unjust decree this court is asked by appellees to approve and affirm.

II. INACCURACIES IN APPELLEES' BRIEF.

The zeal of counsel has led to not a few statements, more or less important, in the brief of the appellees, the accuracy of which is challenged. Attention is invited to some of the more conspicuous of these.

1. The Alice property was not operated successfully for a number of years prior to the sale under consideration. The company had paid no dividends since 1898. The lower workings had long been under water, which had been allowed to rise to the 700-foot level. The hoist had been destroyed by fire, but a new one had been erected, and more recently the mill, which does not appear to have been used in modern times except in connection with some experimental work on the zinc ores, was burnt down. The only ore extracted was taken from the old workings above the water level by leasers or "tributers."

Reviewing the condition of the property in an effort to leave on the mind of the reader the impression of a hopeless ruin, that a sale might be justified, the brief, at page 86, asserts that "for many years the property had been practically abandoned."

This assertion is wholly unjustifiable. Abandonment implies a surrender of possession with no intention of re-

asserting it and regardless of what becomes of the property.

II Lindley on Mines, 642-645 (2d Ed.).

Not only was possession held without interruption by the company through its tributers, numbering from eight to thirty during the period immediately prior to the sale, but the company maintained an office on the Alice mill site adjoining the Alice claim, under a superintendent, and kept two watchmen regularly employed to guard the property.

Record, Vol. I, pages 371-372.

With like purpose the court is advised, at page 9 of the brief, that the leasing operations resulted in a loss to the company in the year 1902 of \$20,320.00. But that figure represents only the difference between the income and the total outlay of that year, including the cost of a new hoist, \$19,575.23 (Appellants' Brief, page 13). The fact is that the net loss (on operations) for the eight years from 1898 to 1906 amounted approximately to but \$8,000, making allowance for the cost of the new hoist, while the indebtedness of the company was swelled during the three years and nine months of the Butte Coalition control from \$27,784.75 to \$34,101.56 (Record, Vol. I, page 447) about \$1,700 a year, which, had the apparently needless Eastern office, entailing an expense of \$1,901.61 (Record, Vol. I, page 449), been dispensed with, would have been reduced to less than \$1,200. With a property worth confessedly more than a million and a quarter, the company was not going into bankruptcy very fast. Meanwhile, development was proceeding in adjacent properties, the copper-producing area was being extended and the metallurgists of the world were struggling with the problem of the economic reduction of refractory zinc ores, with marked success in the

case of those of the neighboring properties of the Butte Superior, and the Butte Coalition was carrying the indebtedness without a murmur, as the Walker Brothers had sustained the burden when they owned the controlling interest.

In the same connection (page 9) the court is informed that the mill and hoist on the Alice property had burned down. That is quite true, but only half the truth—at least not more than three-quarters. A new hoist had been erected, in place of the old one, the cost thereof making up, as stated, two-thirds of the indebtedness of the company under the old management. The mill had burned down. It had not been used by the company for some years—doubtless had become obsolete. It was fitted up for and was employed at the time of the fire by a company which was making an attempt to treat the zinc ores (Record, Vol. II, page 952). As it went out of business on the occurrence of the fire, it would not be an unreasonable inference that financial troubles may have had something to do with the termination of the experimentation.

Some reliance is placed upon the failure of the effort in which the mill was being used at the time of its destruction in support of the contention or view that the Alice zinc ores are hopelessly refractory.

The company making the attempt had been promoted by a Rabbi, and its operations were directed by a gentleman who had had no experience in work of that character. Their efforts were never regarded seriously in Butte (Record, Vol. II, page 894).

In the same paragraph of the brief to which reference was last made, the property for which the Anaconda Company paid the equivalent of a million and a half is characterized as "this worked-out and dilapidated mining property."

As to its being "worked out." It will be remembered that tributers were engaged in extracting ore from above the 700-foot level even down to the time of the sale under investigation, ore that under the relatively crude methods of the earlier days had been left behind in the old stopes. The royalties paid by them while the Butte Coalition controlled the property amounted to \$16,347.52 (Record, Vol. I, page 446).

Moreover, large bodies of zinc ores were open to view above the water level, and others were known to have been left behind in the lower workings. Not only was there, when they were exposed, no known process of treating them successfully, but the presence of the zinc made more difficult and expensive the extraction of the silver which they carried.

Besides, it does not appear by any testimony that the Rainbow lode had become barren in the depths. The cessation of operations by the company on any large scale occurred contemporaneously with the slump in silver in the early nineties. Whatever might be said of the property, it could not be truly characterized as "worked out," neither could it be fairly spoken of as dilapidated. The only surface structures of which the evidence tells is the office, the condition of which is not disclosed, the hoist which was new and the mill which had been burned down. It is disclosed that some, perhaps many, of the stopes above the 700-foot level had caved, a vicissitude to which all mine workings above the water table are subject. But if the upper workings were not generally in good condition, it would have been impossible for the tributers to continue their operations, which were so extensive as to justify the expenditure of nearly \$20,000 in the construction of the new hoist for their use. The record is entirely silent as to the workings below the 700, and the court will perhaps

take judicial notice that as they were constantly under water they were in a state of excellent preservation.

2. Though the Butte Superior's efforts to work profitably the zinc ores found in that part of the Rainbow lode had, no doubt, been attended with more marked success than that which resulted from the more or less crude experimental work conducted on the Alice ores, perhaps because the intelligence and persistence brought to the task were equally disproportionate, it had experimented for six years before a known process was developed, that is to say, adapted to the particular ores to be treated, by its superintendent, Mr. Bruce, through which its operations, in a concentrator specially contrived, produced satisfactory returns (Record, Vol. II, page 872).

The appellees' brief asserts that "The record shows that Bruce was unable to devise a method successfully to treat the Alice ores" (page 87). No reference is given in connection with this statement, and a thorough search of the record will reveal no such evidence. Mr. Bruce never tried to work out a process for the treatment of the Alice ores.

3. Attempting to justify the disposition of the property of the Alice for Anaconda stock, though it is confessed that neither under the statute nor its articles the first-mentioned company had any express power to take or hold stock of another corporation, the claim is advanced that the transaction was but a step in the proceedings for the dissolution of the Alice and the transmutation of its assets into cash for distribution among its stockholders. The contention is anticipated, and the views of appellants, in the light of the facts, set out in their brief, page 73 to page 83.

At page 184 of the appellees' brief is the statement, "It was also found by the court that the sale of the Alice property was authorized in pursuance of a plan touching the ultimate dissolution of the Alice Company." No reference to the record accompanies this statement, and the con-

text does not serve to identify the court referred to. That is immaterial, however, because no court so held. The District Court held directly to the contrary. The comment of Judge Bourquin on that feature of the case is quoted in appellants' brief at page 83, from the opinion filed by him, in which he asserts that the facts relied on "did not deprive the taking of the stock of the quality of a permanent investment."

The point was expressly reserved by the Circuit Court of Appeals (Record, Vol. II, page 1000), properly enough, if the decree was to be reversed on other grounds, as advised by Judge Ross, but indefensibly so when it was to be affirmed as determined by the majority of the court.

Judge Bourquin but concurred with the view earlier expressed by Judge Hunt in awarding an injunction *pendente lite*. That able jurist said on the question before us:

"I do not think the evidence justifies a conclusion that at the time that the circular letter of April 27, 1910, to the stockholders of the Alice Company, was issued, the object in view was to dissolve the Alice Company, inasmuch as the circular letter itself not only is wholly silent concerning dissolution, but expressly states the purpose of the meeting to be to submit to the consideration of the stockholders and to have them pass upon the proposed contract of sale between the Alice Company and the Anaconda Company, which proposition, if approved, would result in the sale and transfer of all of the property and securities of the Alice Company to the Anaconda Company, in consideration of the issuance and payment by the Anaconda Company of thirty thousand shares of its capital stock."

4. At page 145 of the appellees' brief reference is made to the case of

MacGinniss *v.* Boston & Montana, 29 Mont., 428, in which the court had under consideration an anti-trust

statute of the State of Montana, the nature of which is discussed in appellants' brief, page 106; and on page 146 of appellees' brief is set out what purports to be the propositions therein determined, among others:

"(a) * * * That a private individual could not undertake to enforce such laws by a suit in equity; that this was the duty devolving upon the State."

The holding of the court is directly to the contrary; that is, it held that a stockholder of a corporation absorbed, or about to be absorbed, contrary to the statute, may maintain an appropriate suit for relief in equity.

5. In an effort to justify the consolidation of 1910, which included the acquisition of the Alice properties, the brief states, at page 161, that "It clearly appears from the evidence in this case, as hereinbefore pointed out, that the economies brought about by the acquisition of the properties acquired by the Anaconda Company were absolutely essential to enable these companies to continue to be successful competitors, with a reasonable profit, against the copper producers of the United States," and more to the same effect.

The evidence "hereinbefore pointed out" is quoted at pages 39 and 40 of the brief, where appears a part of the testimony of C. F. Kelley. At page 39 the witness, as quoted from the record, says that "a *part* of the mining companies operating in Butte had reached the point where they could no longer produce their ores at a profit," which condition, he asserts, was due to "the necessity of operating separate, independent organizations, running separate plants, etc."

Note that the witness says a *part* of the companies *operating in Butte* had reached that point. If two of the nine or ten companies going into the combination were in that condition, the statement would be true—the Alice and the Washoe, for instance. But the statement is not confined to

the companies consolidated. It embraces all companies "operating in Butte," and would be true if two minor companies, not subsidiaries of the Amalgamated at all, were thus circumstanced. But on the next page of the brief (page 40) the statement is qualified and takes this form: "The result was that the overhead charges were eating up a *large part* of the profits, and, as I say, with some of the companies it was a rather close proposition, and a close proposition so far as certain territory was concerned."

It is putting it mildly to say that the testimony referred to—and there is no other—can not be stretched so as to justify the statement challenged.

It might be added that if any reliance was to be placed on the existence of such a condition as the brief asserts prevailed, it ought to be shown by the annual reports of the companies, which would disclose whether the receipts were falling off, whether the expenses were increasing and to what cause the reduced or disappearing balance was due.

If the facts were thus established, the question would then be presented whether under the law a number of competing companies may consolidate because in the case of *some*, but not *all*, of those absorbed, it was found impossible longer to operate at a profit.

If economy in management or operation affords a sufficient justification for a consolidation which would otherwise be violative of the Sherman law, it will be difficult to find a case to which the law is properly applicable. Whether one who engineers such a consolidation is a criminal or not depends on the true resolution of an economic question. The lawyer who is appealed to for counsel would relegate the inquiry to the engineering corps.

III. MASON v. PEWABIC MINING COMPANY.

At pages 191 to 193 of the appellees' brief reference is made to some cases said to apply the principle upon which

the judgment in *Mason v. Pewabic Mining Company* rests. One of these is

Wheeler v. Abeline Nat. Bank Bldg. Co., 159 Fed., 391.

A stockholder complained that corporate property was sold, for an insufficient price, to one who owned a majority of the shares of the corporation and was its president and one of its directors. The dissenting stockholder evidently *wanted the property sold*, for he, himself, testified that he had offered a higher price for it. He was not insisting that the property ought not to be sold at all, but that the price was not adequate. The decree ordered the sale annulled, conditioned that he deposit a bid for it for the amount he claimed he had offered.

Surrogate courts often order a re-sale upon complaint that an insufficient sum has been realized, conditioned that the complaining parties make a better bid.

Perhaps the order made in the case cited may be justified as an exercise of the authority of the chancellor in certain cases to make the award of relief conditional. Possibly such an order would be justifiable if both parties desired a sale and the complaining party was concerned only about getting full value for it. However, it will be noted that in the case being considered, as was the case in *Mason v. Pewabic Mining Company*, that part of the order relied upon was not the subject of review at all. It does not appear that the dissenting stockholder made the slightest objection to the condition imposed, or that the court was called upon to pass upon the question as to whether it had any right to impose it as a condition of vacating the sale.

Much the same situation is presented by the case of

Koehler v. St. Mary's Brewing Co., 77 Atl., 1016.

The majority stockholders of the St. Mary's Company sold all of its property to the Elk County Brewing Com-

pany for \$250,000 of the bonds of the latter company, presumably controlled by the same interests. The sale was held voidable by the dissenting stockholders of the St. Mary's Company, who were objecting to taking the bonds. Apparently no serious contention was made that the price was not adequate, the objection being that the bonds could not be imposed upon the stockholders not willing to accept them. The court upheld this reasonable contention, whereupon, on re-argument, the counsel for the parties responsible for the transaction offered to give the dissenters their proportionate share of \$250,000 in cash. The court ordered that should the amount be deposited within a time fixed to the credit of those protesting, the sale should stand affirmed as ordered by the lower court. It does not appear that this arrangement was not entirely satisfactory to the appellants, nor does it appear that the propriety of such an order or the authority of the court to make it was ever presented for its consideration.

A third case referred to in this connection is

Bowditch v. Jackson Co., 82 Atl., 1014.

The Jackson Company sold its assets to a company referred to as the Nashua Company, *as a part of the proceedings for the dissolution* of the former on the basis of one and one-half shares of the former for one of the latter, the two issues being quoted on the market apparently at \$650 and \$975, respectively. The court found that the price was equitable, that the officers acted in good faith and for the best interest of both companies alike controlled by them. Apparently some provision was made, the exact nature of which is not disclosed, whereby any stockholder could receive his share of the proceeds of the company's assets in money, if he did not care to take Nashua Company stock. This was held to obviate an objection that the

Jackson Company stockholders never agreed to embark in the Nashua Company's business.

The case is distinguishable from that now before the court in a number of particulars, but notably in this, that the court made no new contract for the disposition of the property of the Jackson Company. It simply approved the contract that had been made. As pointed out in the original brief, the court made an entirely new contract for the parties interested in the transaction under inquiry, namely, that the property of the Alice Company should be put up for sale at auction, and unless it brought thereat more than \$1,500,000, it should become the property of the Anaconda for 30,000 shares of its stock, the stockholders dissenting to have the right to their distributive share of \$1,500,000 in cash.

It does not appear from the report of the case being reviewed whether the Jackson Company was or was not authorized, under the law, to acquire stock of another company. Indeed, it would seem that it was not to acquire the stock of the Nashua Company, but that on the transfer of the property of the former to the latter it was to deliver of its stock to the shareholders of the former one and one-half shares for each share owned by them in the Jackson Company. Presumably the stock of each in the Jackson Company was to be surrendered up and canceled as a part of the dissolution proceedings.

That kind of a transfer is condemned by

Kohl v. Lelienthal, 81 Cal., 378; 6 L. R. A., 520.

That is not the only particular in which the case is out of harmony with the authorities generally. It announces, as the basic proposition upon which its conclusion rests, that a majority of the stockholders of a corporation may, at any time it seems to them wise, sell off all its assets and

put it out of business, a view of the law of corporations canvassed in the original brief.

The theory of the transaction above announced is that which is to be gathered from the somewhat meager and indefinite statement of facts. But another is advanced in the opinion as follows:

"The claim is also made that a purchase by the Jackson Company of Nashua Company stock is *ultra vires* and voidable. But the substance of this transaction is not a purchase of stock by the Jackson Company. That company is to be dissolved, and in the process of dissolution, the proceeds of its property are to be divided among its shareholders. The Nashua Company pays \$585,000 for the property. Those who desire to receive payment in stock can do so, and cash will be paid to those who do not wish to invest in the stock. So far as the Jackson Company takes the stock at all, it is merely to transfer it to those who elect to take it, or to sell it for the guaranteed price and pay the proceeds to those who wish to receive money instead of stock."

Of course if, in the process of dissolution, the property of the Jackson Company was actually sold for \$585,000 to be paid by the Nashua Company to the stockholders of the former respectively in proportion to their interests, the Nashua Company likewise agreeing to give to any stockholder so electing its shares at \$650 instead of cash, there perhaps was no substantial ground of objection to the transaction.

IV. CORPORATIONS AUTHORIZED TO "DEAL IN" PROPERTY.

At page 54 of the brief of appellees reference is made to certain cases said to justify the conclusion that any corporation may, a majority of its stockholders assenting, dis-

pose of all its property. In several of these, as pointed out in appellants' brief, pages 60 to 63, the corporation was authorized to "deal in" property of the kind disposed of or in property generally.

Attention is then called to the more recent Utah statute (Sec. 322, Comp. St. of Utah, 1907) broadening the powers of corporations and granting to mining corporation then existing power to "deal in" certain specific kinds of property. The appellants have attempted to show, and it is believed, have shown, that the language used in the act impliedly forbids the acquisition of corporate stock (Appellants' Brief, pages 66-67). But aside from that contention, the articles of incorporation of the Alice Company give it no authority to "deal in" property, and it can exercise no powers except those conferred thereby, however broad the statute may be, because of section 10 of Article XII of the Constitution of Utah, as follows:

"No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation."

In this connection it might be said that the case of

Garvey v. St. Joe Mng. Co., 91 Pac., 369,

canvassed at some length in the original brief, is controlling here because it construes the reservation act of 1874 and the equivalent provision of the State constitution, under which the right is reserved to alter or amend the charters of corporations, holding that neither authorizes the legislature, by a change in the law, to change the contract into which the stockholders enter *inter sese*.

V. IS THE EQUITABLE REMEDY OF CANCELLATION AVAILABLE?

The contention that though the appellants might have had injunction to arrest the execution of the deeds evidenc-

ing the transfer they assail, they cannot have them annulled, was anticipated and commented on in the original brief.

Appellants' Brief, pages 113-115.

Unless the case presents some elements of estoppel, there can be no reason for denying either form of relief as the conditions require. This view is sustained by the following from a recognized authority:

"There is a well-known maxim, '*interest reipublicae ut sit finis litium*'; and there is a time when an *ultra vires* transaction is so thoroughly carried through that on every ground of justice and expediency, as between the immediate parties to it, the affair is over for all purposes. The difficulty consists in saying what is the exact meaning of the word 'completed.' When is a transaction 'completed' within the meaning of the proposition?

"As regards this country, it is certain that before an *ultra vires* transaction is so at an end something more is required than that it should be completed on one side only, and, indeed, something more than that it should be completed in the ordinary sense of the word on both sides. The authorities in the United States would appear to be more liberal on this point as on many others; but unquestionably in this country as long as a transaction remains in agreement only, however much it may be perfected on the one side, the other side is entitled to repudiate it on the ground of its being *ultra vires* of the corporation, subject, of course, to the liability of the side repudiating to account for any benefits that it may have received. Probably, too, even where a transaction has been carried through on both sides so that each has done all that it agreed to do, if no delay has occurred, and if nothing has taken place to alter the position of the parties, so that the transaction may be reopened without injustice to either side, and the parties replaced in their original position, then notwithstanding the com-

pletion in this sense of the transaction, it will be reopened on the terms of placing both sides in their original position."

Brice on *Ultra Vires* (3d Ed.), page 696.

The specific question was considered in

Morris v. Elyton Land Co., 28 So., 513-516,

which was a stockholders' action to annul a sale made of corporate property in violation of their rights.

The following extract from the opinion will disclose the position of the court:

"We think there can be no doubt of the proposition that a court of chancery can and will undo an act which is *ultra vires*, as well as prevent the same by injunction. There is an equity of rescission as well as of prevention. 2 *Spell Priv. Corp.*, sec. 615; *City of Chicago v. Cameron*, 120 Ill., 447, 11 N. E., 899; *Mayor, etc., v. Knoxville & O. R. Co.*, *supra*; *Byrne's Case*, 65 Conn., 336; 31 Atl., 833; 28 L. R. A., 304; *Land Co. v. Dowdell*, *supra*."

VI. WILDER MANUFACTURING CO. v. CORN PRODUCTS REFINING CO., 236 U. S., 165.

The appellees list the above-mentioned case first among a line of authorities which they cite in support of their contention that the appellants can not assert the invalidity of the transaction they attack, because it is forbidden by the Sherman law. Copious extracts are made from the opinion in the case referred to, in which is elaborated the maxim that when a new right and a new remedy are given, the latter is exclusive.

The original brief pointed out the inapplicability of the decision to the case before us, the attack being made therein, not on one of a series of transfers effecting the consoli-

dation assailed, but a contract made by the consolidation after it came into being in the pursuit of the business in which it was engaged. It was a plain case in which a defendant bought goods of the plaintiff, for the payment of which he attempted to escape by pleading that the corporation of which he bought had no legal existence because its organization was violative of the Sherman law. It is not difficult to distinguish between contracts through which the absorption of the business of commercial rivals is accomplished and purchases made by the consolidation after it has come into being of supplies in the ordinary conduct of business in which it is engaged. In other words, the contract considered in the Wilder Mfg. Co. case, as well as in *Connolly v. Union Sewer Pipe Co.*, was not one out of which the alleged unlawful combination arose or through which it was effected at all.

But a word may be added concerning the discussion in the opinion in the Wilder Mfg. Co. case of the principle to which reference has been made.

That principle is one to be borne in mind by the court in its attempt to arrive at a correct opinion as to the intention of Congress in the enactment of the statute under consideration. The problem before the court is to determine what Congress meant, and the rule of construction is merely an aid to the court in arriving at a proper solution thereof. Could Congress have intended that a stockholder in a corporation, the property of which its directors propose to put into a consolidation in violation of the law, should not have the right to apply to a court to restrain such an unlawful disposition of it, or to have the transaction annulled if it had actually been carried out? What considerations of public policy could have induced Congress to entertain such a purpose? One can readily understand how it might be urged that Congress did not intend that one who is not interested in the property involved, who suffers no detriment

other than that to which the public generally is subject, ought not to be permitted to question the transaction, and this court has repeatedly held that he can not. But why should Congress intend to supplant, only by implication, in the enactment of this statute, the wholesome rule of the law thus expressed by Judge Gibson in

Foster v. Commonwealth, 8 Watts. and S., 77, 79:

"It is written on the hornbook of the law that the public and a party particularly aggrieved may each have a distinct but concurrent remedy for an act which happens to be both a public and a private wrong."

Moreover, the overwhelming denunciation in the statute of the acts against which it was directed leads to the conclusion that Congress could not have intended to give those acts a qualified sanction, but must have intended that they should fall whenever, under established rules, their validity was questioned. What reason is there to believe that, denounced as they were, Congress intended one who was damaged in such a way as that he could satisfactorily establish the amount of his loss should recover threefold, but that in the multitude of cases in which equity would otherwise take jurisdiction for the very reason that the injury is irreparable and incapable of being compensated by money damages, impossible of proof in all probability, there should be no remedy? Congress must have appreciated that it would be all but impossible for a stockholder of a corporation to prove what or how much money damages he suffered by reason of the absorption of its property by a monopolizing combination. Few of them are brought into being without all manner of assurances to the stockholders of the constituent companies that they will profit by the arrangement proposed, and the history of these transactions discloses that they often do. Such assurances were given in the case at bar, and it is maintained in the brief that it was highly

advantageous to the Alice stockholders to exchange the property of that company for Anaconda stock. It could not have been in the mind of Congress, if one may so express the idea, to allow one to assail the transaction if he could show money damages, but to forbid him, if he could not, to arrest the consummation of the transaction through an appropriate suit, assuming him to be interested in the property involved so as to give him the requisite standing before a court of equity. Neither is it readily conceivable as to why Congress should require the stockholder to stand by until the wrong was accomplished and then permit him to recover threefold damages, forbidding him meanwhile to enjoin the proceeding so highly penalized. The word "forbidding" is used advisedly, for, unless a suit to restrain or correct the wrong is either expressly or impliedly forbidden by the statute, it is sanctioned by the ancient rule above quoted.

Respectfully submitted,

C. B. NOLAN,

T. J. WALSH,

Solicitors for Appellants.

T. J. WALSH,

Counsel for Appellants.

Vol. I

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1900

No. 813 25

PETER GEORGE, JOSEPH R. WALKER, JOSEPH S. BAER
ET AL, APPELLANTS.

VS.

ANACOSTA COPPER MINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.

FILED JANUARY 16, 1911.

(25,237)

(26,287)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 820.

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER
ET AL., APPELLANTS,

vs.

ANACONDA COPPER MINING COMPANY ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

INDEX.

	Page
Caption	<i>a</i>
Names and addresses of counsel.....	1
Transcript of record from the district court of the United States for the district of Montana.....	1
Caption	1
Amended bill of complaint.....	2
Subpœna	27
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	27
Marshal's return on subpœna.....	28
Subpœna, <i>toties quoties</i>	29
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	30
Marshal's return of service.....	30
Additional subpœna, <i>toties quoties</i>	31
Memorandum pursuant to Rule 12, Supreme Court of the United States.....	32
Marshal's return of service.....	33
Answer of Anaconda Copper Company.....	33
Answer of Alice Gold & Silver Mining Co.....	70

	Page
Answer of John D. Ryan.....	107
Interlocutory decree	143
Final decree	152
Motion for temporary restraining order and injunction.....	156
Affidavit of T. J. Walsh.....	156
Injunction	164
Memorandum order, Hunt, J.....	166
Stipulation as to maps, exhibits, &c.....	177
Order as to maps, exhibits, &c.....	178
Decision, Bourquin, J., May 1, 1915.....	178
Memorandum decision, Bourquin, J., July 2, 1915.....	189
Stipulation of facts.....	191
Findings of fact.....	201
Petition for appeal by Geddes <i>et al.</i>	210
Order allowing appeal.....	211
Assignment of errors.....	211
Bond on appeal.....	215
Citation and service.....	218
Præcipe for record on appeal.....	219
Memorandum decision, February 4, 1916.....	221
Stipulation to consolidate records, &c.....	223
Petition for appeal by Geddes <i>et al.</i>	225
Order allowing appeal.....	226
Assignment of errors.....	226
Bond on appeal.....	231
Citation and service.....	234
Præcipe for record on appeal.....	235
Statement of evidence.....	237
Complainants' Exhibit 1—Articles of incorporation, Alice Mining Co.	238
Complainants' Exhibit 4—Deed, Alice Company to Anaconda Company.....	253
Testimony of L. O. Evans.....	265
John G. Maroney.....	273
C. W. Goodale.....	287
C. F. Kelley.....	306
Plaintiffs' Exhibit 2—Minutes stockholders' meeting, Alice Co., May 27, 1910.....	317
Plaintiffs' Exhibit 3—Minutes stockholders' meeting, Alice Co., May 8, 1911.....	347
Testimony of Howard C. Buzzo.....	371
Plaintiffs' Exhibit 4—List of dividends, Alice Mining Co.....	380
Testimony of John D. Ryan.....	381
Complainants' Exhibit A—Ryan, production Badger States Mine	441
B—Ryan, circular letter to Alice Company stockholders and exhibits...	442
C—Ryan, form of proxy.....	449
V—Ryan, letter, Buzzo to Walker.....	450
W—Ryan, letter, Buzzo to Walker.....	453
X—Ryan, letter, Buzzo to Walker.....	456
Y—Ryan, letter, Buzzo to Walker.....	457
Z—Ryan, letter, Buzzo to Walker.....	459

INDEX.

iii

Page

Testimony of A. H. Melin.....	461
Complainants' Exhibit	
D—Melin, incorporators' minutes and minutes of first meeting board of directors Amalgamated Company.	465
E—Melin, minutes adjourned meeting of directors of Amalgamated Company	505
F—Melin, minutes, stockholders' meeting Amalgamated Company.....	514
G—Melin, minutes directors' meeting Amalgamated Company	543
H—Melin, minutes, directors' meeting Amalgamated Company	547
I—Melin, minutes, directors' meeting Amalgamated Company	551
J—Melin, minutes, special meeting of directors Amalgamated Company.	564
P—Melin, statement furnished New York Stock Exchange by Amalgamated Company	569
K—Melin, statement issued to stockholders Amalgamated Company..	581
L—Melin, statement issued to stockholders Amalgamated Company..	589
M—Melin, statement issued to stockholders Amalgamated Company..	596
N—Melin, statement issued to stockholders Amalgamated Company..	600
O—Melin, statement issued to stockholders Amalgamated Company..	606
AA—Melin, statement, copper on hand December 31, 1909.....	612
BB—Melin, statement, copper on hand June 30, 1909.....	612
CC—Melin, statement, copper on hand December 31, 1908.....	612
DD—Melin, statement, copper on hand June 30, 1908.....	613
EE—Melin, statement, copper on hand December 31, 1907.....	613
FF—Melin, statement, copper on hand June 30, 1907.....	613
GG—Melin, statement, copper on hand December 31, 1906.....	613
HH—Melin, statement, copper on hand June 30, 1906.....	614
II—Melin, statement, copper on hand December 31, 1905.....	614
JJ—Melin, statement, copper on hand June 30, 1905.....	614
Testimony of Joseph Warner Allen.....	615

	Page
Complainants' Exhibit KK—Allen, minutes special meeting of directors Alice Mining Co.....	620
LL—Allen, form of proxy.....	654
MM—Allen, letters and telegrams.....	656
NN—Allen, minutes special meeting of directors of Alice Mining Co.....	665
OO—Blum, letter, Ferry to Blum.....	698
PP—Blum, telegram, Allen to Blum.....	699
Testimony of Thomas W. Lawson.....	699
Plaintiffs' Exhibit 1—Lawson, advertisement from Boston Herald.....	707
Plaintiffs' Exhibit 2—Lawson, advertisement from Boston Herald.....	709
Testimony of Arthur V. Corry.....	719
Walter Harvey Weed.....	775
Arthur V. Corry (recalled).....	828
J. R. Walker.....	831
Complainants' Exhibit 1—Walker, assay sheet.....	837
2—Walker, assay sheet.....	838
3—Walker, assay sheet.....	840
5—Walker, assay sheet.....	842
6—Walker, assay sheet.....	843
Testimony of C. F. Kelley.....	851
James L. Bruce.....	864
John Gillie.....	877
Howard J. Buzzo.....	887
John C. Febles.....	902
Defendants' Exhibit 3—Febles, assay sheet.....	906
Testimony of Reno H. Sales.....	909
John Gillie (recalled).....	930
Albert C. Burrage.....	957
Walter Harvey Weed (recalled).....	978
Memorandum of services performed by complainants' solicitors.....	982
Order approving statement of evidence.....	984
Clerk's certificate.....	985
Order of submission.....	987
Order directing filing of opinion and dissenting opinion and filing and recording of decree.....	988
Opinion, Gilbert, J.....	989
Dissenting opinion, Ross, J.....	991
Decree.....	1011
Order staying issuance of mandate under Rule 32.....	1012
Petition for appeal.....	1012
Assignment of errors.....	1013
Order allowing appeal and fixing amount of bond.....	1017
Bond on appeal.....	1018
Præcipe for certified transcript of record on appeal.....	1020
Certificate of clerk of U. S. circuit court of appeals to transcript of record on appeal to Supreme Court of the United States.....	1021
Citation and service.....	1022

No. _____

United States
Circuit Court of Appeals
for the Ninth Circuit

PETER GEDDES, JOSEPH R. WALKER, JOSEPH S. BAER, HENRY S. EVERETT, MARGARET ANN MEEHAN, EUGENE BLUM, ISAAC BLUM, EDWARD BLUM, ISADOR BAER, ALPHONS DREYFOOS; and ALPHONS DREYFOOS, EUGENE BLUM, DAVID C. GOLDBERG and EUGENE BASCHO, Co-partners doing business under the firm name and style of DREYFOOS, BLUM & COMPANY; LEOPOLD FREUND and ALICE FREY,

Appellants,

vs.

ANACONDA COPPER MINING COMPANY, a Corporation, ALICE GOLD AND SILVER MINING COMPANY, a Corporation, and JOHN D. RYAN, J. W. ALLEN, W. D. THORNTON, A. C. CARSON, and E. S. FERRY,

Appellees.

Transcript of Record

Upon appeal from the United States District Court
for the District of Montana.



Names and Addresses of Attorneys of Record.

Messrs. WALSH & NOLAN, Helena, Montana,

Solicitors for Complainants and Appellents.

C. F. KELLEY, ESQ., L. O. EVANS, ESQ., W. B.

RODGERS, ESQ. and D. GAY STIVERS,
ESQ., Butte, Montana.

Solicitors for Defendants and Appellees.

*In the District Court of the United States in and
for the District of Montana.*

No. 1086.—IN EQUITY.

PETER GEDDES, et al.,

Complainants,

vs.

ANACONDA COPPER MINING COMPANY, et al,

Defendants.

BE IT REMEMBERED, that on the 29th day of
June, 1912, the complainants, by leave of court,
filed their amended bill of complaint herein, in
the words and figures following to-wit:

*In the Circuit Court of the United States, Ninth
Circuit, in and for the District of Montana.*

PETER GEDDES, JOSEPH R. WALKER, JOSEPH
S. BAER, HENRY S. EVERETT, MARGARET
ANN MEEHAN, EUGENE BLUM, ISAAC
BLUM, EDWARD BLUM, ISADOR BAER,
ALPHONS DREYFOOS; and ALPHONS
DREYFOOS, EUGENE BLUM, DAVID C.
GOLDENBERG and EUGENE BASCHO, Co-
partners doing business under the firm name
and style of DREYFOOS, BLUM & COM-

PANY; LEOPOLD FREUND and ALICE
FREY,

Complainants,

vs.

ANACONDA COPPER MINING COMPANY, a Cor-
poration, ALICE GOLD AND SILVER MIN-
ING COMPANY, a Corporation, and JOHN D.
RYAN, J. W. ALLEN, W. D. THORNTON, A.
C. CARSON and E. S. FERRY,

Defendants.

Amended Bill of Complaint.

To the Honorable the Judges of the Circuit Court
of the United States, in and for the District of
Montana:

Come now the complainants above named,
Peter Geddes, Joseph R. Walker, Joseph S. Baer,
Henry S. Everett, Margaret Ann Meehan, Eugene
Blum, Isaac Blum, Edward Blum, Isador Baer,
Alphons Dreyfoos, and Alphons Dreyfoos, Eugene
Blum, David C. Goldenberg and Eugene Bascho,
co-partners doing business under the firm name of
Dreyfoos, Blum & Company, and Leopold Freund
and Alice Frey, and, for their amended bill of
complaint herein, leave of court having first been
had and obtained, complain and say:

That the complainants Alphons Dreyfoos, Eu-
gene Blum, David C. Goldenberg, Eugene
Bascho are co-partners doing business under
the firm name and style of Dreyfoos, Blum &
Company.

That the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the territory of Utah on the 16th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, as follows:

"The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining work; to buy, sell and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways, and freight and transportation routes, to facilitate the business of the company; to appropriate, buy and sell water, water rights and ways for conducting the same, and generally to do all kinds of business incident to, connected with, or convenient for the management of a general mining business, in the Territories of Utah, Montana, Idaho, and in any State or Territory of the United States."

And that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation as follows:

"To engage in, do and carry on any and all kinds of manufacturing, mining, mechanical, agricultural, chemical, electrical, mercantile commercial, industrial and productive business or businesses, and any and all business pertaining to ~~the~~ ^{the} milling, ~~reduction~~ ^{refining} and treating of ores and minerals:

To purchase or otherwise acquire, own, hold, rent, mine, develop, improve, work, deal in, lease, sell, convey, or otherwise dispose of mines, and mineral lands containing gold, silver, copper, lead, tin, cinnabar, iron, coal and any other, or any, metals or minerals of whatsoever kind or description;

To purchase or otherwise acquire, construct, own, hold, rent, use, operate, deal in, lease, sell, convey or otherwise dispose of smelting, reduction and refining mills and works for the treatment and reduction of ores and minerals, also saw mills and other mills and works for cutting, dressing and otherwise treating logs, timber, lumber and other woods;

To purchase or otherwise acquire, own, hold, rent, use, cultivate, deal in, lease, sell, convey or otherwise dispose of lands for agricultural and stock purposes and timber lands, and rights and interest therein;

To purchase or otherwise acquire, own, hold, rent, use, lease, sell, convey or otherwise dispose of rights to the use of streams and other bodies of water for floating, transporting, moving, storing and otherwise handling logs, timber, lumber and other things, products and materials, used in or about the business of the company, also waters and water rights, flowing streams, reservoirs, flumes, canals and ditches and rights of way therefor, for supplying water and furnishing power to the Company, and for all

other uses and purposes of the Company in any of its business;

To construct and operate ditches, canals, dams, and other means of conveying and utilizing water for irrigation, power, transportation and other useful purposes;

To purchase, hold, develop, improve, use, lease, sell, convey or otherwise dispose of water powers and sites thereof and lands necessary or useful therefor, or for the industries and habitations arising or growing up, or to arise or grow up, in connection with or about the same.

To purchase, lay out, plat, develop, lease, sell, deal in, convey or otherwise use or dispose of townsites or towns, or the lots, blocks or subdivisions thereof, or lots, blocks or subdivisions in any town, village or city;

To acquire by purchase or otherwise, construct, own, rent, use, operate, lease, sell, convey or otherwise dispose of electric light and power plants, works, lines, systems and equipments and telegraph and telephone plants, works, lines, systems, and equipments, also roads, bridges, ferries, tramways, cable lines, roads, systems and equipments and other means of conveyance and transportation, and all rights of way therefor, and all rights to collect tolls, rates, fares and charges for the use and service thereof, and all franchises and privileges necessary therefor;

To acquire by purchase or otherwise, own, use, deal in, sell, assign, convey or otherwise dispose of patents and patent rights and licenses for any

and all kinds of inventions, devices and improvements;

To acquire by purchase or otherwise, take, own, hold, deal in, sell, assign, transfer, or otherwise dispose of stocks and shares of stock of other incorporated companies, and bonds, negotiable instruments and other obligations and securities, with power to this Company to endorse and to guarantee any bonds, negotiable instruments, or other obligations dealt in or sold by it, or which may be, or may have been, made or issued by any corporation in which this company shall own a majority of the stock;

To purchase or otherwise acquire, construct, own, rent, equip, deal in, lease, sell, convey or otherwise dispose of, and to do or carry on any and all business pertaining to, or usually done or carried on by or at, hotels, inns, taverns, lodging houses, boarding houses, public halls, buildings, grounds, parks, tracks, and other resorts for business, sport, exercises, recreation and amusement;

To acquire, buy, own, hold, sell, exchange, and deal in any and all kinds of merchandise, personal property and real estate wheresoever within the State of Montana, or elsewhere without said state;

To lend money for profit and to take, hold and realize upon securities therefor;

To borrow money for the business of the Company and to give security therefor; and, for the purpose of raising money necessary for the transaction of the business of the Company or any of its business, or the acquisition of property, to ex-

ecute bonds, debentures, promissory notes, or other evidences of indebtedness, and to secure the same by mortgage or pledge of all or any part of the property of the Company, real or personal;

To do business on commission, and to act as agent or attorney of or for others, persons or corporations, in the doing or transacting of any business which this Company may or can do or carry on for itself.

To carry on any other business, or to do any other thing in connection with the objects and purposes above mentioned, that may be necessary or proper to successfully accomplish or promote said objects and purposes."

That your orators are, and for more than two years last past have been, the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as follows, to-wit: the said Peter Geddes, 3100 shares; Joseph R. Walker, 2110 shares; Joseph S. Baer, 700 shares; Henry S. Everett, 900 shares; Margaret Ann Meehan, 1050 shares; Eugene Blum, 400 shares; Isaac Blum, 1800 shares; Edward Blum, 1175 shares; Isador Baer, 200 shares; Alphons Dreyfoos, 500 shares; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, and Eugene Bascho as members of the firm of Dreyfoos, Blum & Company, 400 shares; Leopold Freund, 100 shares; Alice Frey, 25 shares.

That the said Alice Gold and Silver Mining Company is, and for many years last past, has been, the owner of extensive and very valuable mining ground, aggregating about 340 acres, situated in

the County of Silver Bow, State of Montana, and of improvements thereon, and of property used in connection therewith, and in the prosecution of its business of mining and reducing ores and selling and disposing of the metals extracted therefrom and other products, all of which property is, and for more than two years last past has been of the value of more than fifteen million dollars; that the said mining claims of the said Alice Gold and Silver Mining Company have been extensively worked and ores of immense value taken therefrom, and that they are within the rich mineral region in and adjacent to the city of Butte in the County of Silver Bow, State of Montana.

That prior to the year 1899 there were a large number of independent companies engaged in mining at the said city of Butte, and in extracting the ores from claims within the mining region aforesaid and in reducing the same, and in selling and disposing of the metals extracted from the same, the greater portion of which were by the said companies transported from the said city of Butte and within the State of Montana to the city of New York in the State of New York and to other markets in the eastern states and beyond the State of Montana where the same were, by the said companies, sold and disposed of, and that among other companies so engaged in such business were the defendants the Anaconda Copper Mining Company and the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Min-

ing Company, the Butte and Boston Consolidated Mining Company, the Parrot Silver and Copper Mining Company, the Colorado Smelting and Mining Company, a group of companies known collectively as the Heinze Companies by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, the Johnstown Mining Company, the Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark Companies, owing to the fact that one W. A. Clark was the chief factor in said companies, including the Colusa Parrot Mining and Smelting Company and the Original Consolidated Mining Company, and that all of the said corporations were, at the time last hereinabove mentioned, competing with each other in the sale of the products of the mines so owned and operated by them, as aforesaid, in the said markets within the United States and beyond the State of Montana, where such products were by said companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save, also, that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company, the stock of said companies being held practically by the same persons.

That at the time last hereinabove mentioned a very large part of the copper produced in the

world, and a still larger part of that produced in the United States was, as it still is, produced within the State of Montana from ores mined from within the said mining region at and near the city of Butte, and that during all of the times since prior to the year 1899 any individual, corporation or association that could control such corporations as produced the greater portion of the mineral output of the city of Butte and vicinity, and by reason of such fact in large part control the supply of copper available for use in the several states of the union, could fix and regulate the price of that commodity in the markets of the union and in states other than the state of Montana.

That in the year 1899 certain individuals, with a view among other things, so to control the production of copper and the supply thereof, and to fix and regulate the price thereof in the markets of the world, and to suppress competition in the sale thereof, and particularly in the product of the mines at and near the city of Butte, when the same should be transported for sale to markets in the eastern states, entered into a conspiracy in restraint of trade and commerce among the several states, and, to carry out the purpose of such conspiracy, organized, under the laws of the State of New Jersey, a corporation called the Amalgamated Copper Company, having powers as recited in its articles of incorporation, among others, "To carry on the business of mining, milling, concentrating, converting, smelting, treating, preparing for market, manufacturing, buying, selling, ex-

changing, and otherwise producing and dealing in gold, silver, copper, metals and minerals, and in the products and byproducts thereof of every kind and description, and by whatsoever process the same can be or may be hereafter produced; and generally and without limit as to amount, to buy, sell, exchange, lease, acquire, and deal in lands, mines and minerals, rights and claims and in the above specified products, and to conduct all business appurtenant thereto. — — To purchase, subscribe for or otherwise acquire, and to hold the shares, stocks or other obligations of any company organized under the laws of this state, or of any other state, or of any territory or colony of the United States, or of any foreign country, and to sell or exchange the same, or upon a distribution of the assets or division of profits, to distribute any such shares, stocks, or obligations or the proceeds thereof amongst the stockholders of this company," which said corporation, it was intended by the said conspirators who organized the same, should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining, and particularly in copper mining, at and near the city of Butte, as that it could control such corporations, and, through the control of such corporations, regulate the supply and fix the price of copper in the markets of the world.

That the said Amalgamated Copper Company was organized with a capital stock of seventy-five million dollars, and that prior to the month of June, 1901 it acquired, in exchange for certain of

its capital stock, all of the stock of the Anaconda Copper Mining Company, the Washoe Copper Company, the Parrot Silver and Copper Mining Company and the Big Blackfoot Milling Company, a lumber company engaged in supplying timber for use in the Butte mines, and the Hennessy Mercantile Company, a trading company engaged in general merchandising and dealing extensively with the men employed in the said mines. That thereafter, on June 6th, 1901, the capital stock of the Amalgamated Copper Company was increased to one hundred and fifty-five million dollars, and that shortly thereafter it acquired all but a few shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company, and the Butte and Boston Consolidated Mining Company, and likewise acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company, issuing in exchange therefor, its own stock.

That at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, on the one side, and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of the stock of said Boston and Montana Consolidated Copper and Silver

Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company, and all or the greater portion of its constituent companies doing business at or near the city of Butte, and that as a result of such litigation all the properties of the said Heinze Companies, together with the properties of other companies organized by the said Heinze since the organization of the said Amalgamated Copper Company, among others, the Corra-Rock Island Mining Company, passed to a corporation organized by the said Amalgamated Copper Company, or by parties intimately associated with it, known as the Red Metal Mining Company, with a capital stock of eleven million dollars, hereinafter referred to, the purchase price of said properties being, as your orators are informed and believe, ten million, five hundred thousand dollars, the acquisition of the said Heinze properties having been so accomplished in the pursuit of the purpose with which the said Amalgamated Copper Company was organized, as hereinbefore set forth.

That prior to the year 1910 the said Amalgamated Copper Company had become the owner of practically all of the stock of the said Red Metal Mining Company, and had likewise become the owner, as your orators are informed and believe, of more than a majority of the stock of various companies engaged in ~~the~~ business of mining and smelting copper ores in the state of Utah and elsewhere in the mining re-

gion in the western part of the United States including the International Smelting and Refining Company, a corporation having a capital stock of fifty million dollars, of which ten million dollars have been issued, and operating on a large scale in the State of Utah, and in selling and disposing of copper and other metals produced by said companies in the markets of the eastern states, in the same manner as hereinbefore mentioned, in connection with the corporations operating at or near the City of Butte, all of which interest was so acquired by the said Amalgamated Copper Company with a view more completely to carry out the purpose for which the said corporation was organized, as hereinbefore set forth.

That during the year 1910, with the same purpose and to carry out more effectually the plan and purpose of the said organization of the said Amalgamated Copper Company, as hereinbefore set forth, it was, by said corporation, and the managing officers and those directing its affairs, deemed advisable that the said defendant, Anaconda Copper Mining Company, should become invested with the title to all of the properties of the various companies of the said Amalgamated Copper Company operating at or near the city of Butte, and with the title to all mining properties located at or near said city of Butte, which, by development or operation, might give rise to any competition in the production or sale of copper or other metals found in association with it, or that might be a potential competitor in the produc-

tion and sale of copper, and to that end the said Amalgamated Copper Company, in association with the said defendant Anaconda Copper Mining Company, purchased all of the properties of the before-mentioned Clark Companies, at or near the city of Butte, save some small and comparatively undeveloped tracts yielding zinc, and copper only in insignificant amounts, if at all, paying therefor, as your orators are informed and believe, twelve million dollars, and that pursuant to the purpose hereinbefore last above mentioned the title to all of the properties of the said Clark companies was transferred to the defendant Anaconda Copper Mining Company, the capital stock of the said company having been, with a view to carrying out such purpose, increased in the month of March, 1910, from thirty million dollars to one hundred and fifty million dollars. That pursuant to such purpose the said Amalgamated Copper Company caused all of the property of the said Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, which meanwhile had succeeded to all the rights of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Company and the Red Metal Mining Company, to be transferred to the said Anaconda Copper Mining Company. which said Anaconda Copper Mining Company thus became the owner of practically all the mines

at or near the city of Butte producing copper, save those of the North Butte Mining Company, producing a relatively unimportant part of the total output of the said mines at and near the city of Butte, as well as of two of the three copper smelters operating in the state of Montana, the one of which so acquired having been, prior to such transfer, the property of the Washoe Copper Company, and the other of the Boston and Montana Consolidated Copper and Silver Mining Company. That in each instance the said Anaconda Copper Mining Company paid for the said properties so acquired by it with its own stock issued in payment pursuant to resolutions procured to be adopted by the said Amalgamated Copper Company at meetings of stockholders of the said selling companies respectively, and which resolutions the said Amalgamated Copper Company was enabled to carry by reason of its ownership of all, or the greater portion, of the stock of the said companies.

That prior to the year 1910, the said Amalgamated Copper Company and the persons managing and directing its affairs, with the same purpose with which it was organized and which it has pursued since it came into existence, and with a view to controlling all the mining operations carried on at or near the city of Butte and the corporations engaged in such mining, or which by reason of their ownership of said properties, at or near said city, might engage in said business or become competitors in the production and the sale

of copper, had caused to be acquired by a certain corporation known as the Butte Coalition Company, a corporation organized by the said Amalgamated Copper Company, or the said parties so managing and directing its affairs and of the stock of which it or they at all times since its organization held and owned a majority and a controlling interest, a majority of the stock of the defendant Alice Gold and Silver Mining Company, which they had caused to be transferred to various persons, most of whom are officers or employes of one or the other of the said companies, to hold in trust for the said Butte Coalition Company, and that by reason of such ownership of more than a majority of the stock of the said defendant Alice Gold and Silver Mining Company, the said Amalgamated Copper Company and the said Anaconda Copper Mining Company had, for some time prior to the year 1910, controlled and dominated the business and affairs of the said Alice Gold and Silver Mining Company, and through their servants, agents and representatives have elected boards of directors of the said Alice Gold and Silver Mining Company, and that through such boards of directors have been in possession for more than two years last past of all of the mining properties of the said defendant Alice Gold and Silver Mining Company, which are situated, as hereinbefore set forth, at or near the city of Butte, and which are immediately adjacent to the mining properties now held by the said Anaconda Copper Mining Company, and which said prop-

erties of the said Alice Gold and Silver Mining Company are rich in ores of zinc, copper, gold and silver.

That prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company, under the direction of the said Amalgamated Copper Company and the said Anaconda Copper Mining Company and the officers thereof, and the parties directing the business and operations of the said companies, caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the city of Salt Lake on the 27th day of May, 1910, for the purpose of considering the proposition, as the same was stated in the notice calling such meeting, of transferring all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company, all of which was done pursuant to the purpose of said Amalgamated Copper Company and the parties directing its affairs, as hereinbefore set forth, to invest the said Anaconda Copper Mining Company with the title to all of the metal-producing mines and mining properties or properties capable of producing any of the valuable metals at or near the city of Butte, as hereinbefore set forth, the more effectually to carry out the purposes with which the said Amalgamated Copper Company was organized, as hereinbefore set forth.

That pursuant to such notice and call a meeting

of the stockholders of the said Alice Gold and Silver Mining Company was held at the city of Salt Lake on the 27th day of May, 1910. That at such meeting there was represented stock to the number of 310,963 shares of the total 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company, 287,000 shares of which were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, though standing on the books of the company in the names of various parties, all of which stock was voted at the said meeting by one E. S. Ferry and one L. O. Evans, attorneys and employes of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company under proxies from the nominal holders of said 287,000 shares of the stock of the said company.

That at the said meeting so called and held a resolution was presented by the said L. O. Evans authorizing and directing the board of directors of the said company to transfer all of the property of the said Alice Gold and Silver Mining Company and the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said company.

That notwithstanding the protest of your orators Peter Geddes, Joseph R. Walker, Eugene Blum, Isaac Blum, Edward Blum, Henry S. Everett, Margaret Ann Meehan, Isador Baer, Joseph Baer, Alphons Dreyfoos, and Dreyfoos, Blum & Company, the said resolution was carried by a vote of 298,598 shares for and 13,385 shares

against, the said E. S. Ferry and L. O. Evans voting all of the shares for which they held proxies in favor of the said resolution and all of your orators present at the said meeting voting against the same. And your orators aver that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not, at the time said meeting was called, and have not since been at any time, worth more than \$1,020,000, as the said Amalgamated Copper Company and the said Anaconda Copper Mining Company, and all of the parties concerned in the effort so to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all times well knew, while the properties of the said defendant Alice Gold and Silver Mining Company have at all of said times, as the said corporations and persons last above mentioned well knew, been worth upwards of fifteen million dollars.

That acting under the pretended authority of the said resolution so adopted at the stockholders' meeting, the directors of the said Alice Gold and Silver Mining Company, acting under the direction of the said Amalgamated Copper Company and the said Anaconda Copper Mining Company, directed the officers of the said company to carry out said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company,

and that acting under the pretended authority of the said resolutions of the said stockholders' meeting, and the said board of directors, on the 31st day of May, 1910, one John D. Ryan, the president of the said Alice Gold and Silver Mining Company and one J. W. Allen, its secretary, in the name of the said Alice Gold and Silver Mining Company, executed in form a deed of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was, on the 24th day of June, 1910, recorded in the office of the county recorder of the county of Silver Bow, State of Montana. The said John D. Ryan who, in form, executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the president thereof, is, and at the time of the execution thereof was, the president of the Amalgamated Copper Company and a member of the board of directors thereof, and is likewise, and was, at the time of the execution of the said deed, a member of the board of directors of the Anaconda Copper Mining Company, and is the officer of each of the said companies entrusted with the immediate direction of the affairs of both of the said companies at and about the city of Butte.

That the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry are, and since prior to the 27th day of May, 1910 have been, each servants and employees of the said Amalgamated Copper company and the said Anaconda Copper Mining Company, or of one or more of the corpor-

ations controlled by the said Amalgamated Copper Company, and in all things done by them, as hereinbefore set forth, they acted under the direction and pursuant to instructions received from the said Amalgamated Copper Company.

That having procured the transfer in form of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, the said defendant Anaconda Copper Mining Company and the said Amalgamated Copper Company and the individuals controlling and directing the affairs of both of the said companies, instituted proceedings in the District Court of the Third Judicial District of the State of Utah, in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending, being resisted by your orators.

Your orators further aver that the United Metals Selling Company is a corporation organized in the year 1900, with a capital stock of five million dollars, for the purpose of doing a general commission business in metals, and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company it has acted as selling agent for the producing companies, so as aforesaid controlled by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company and the said Amalgamated Copper Company, and that it had become, by the month of March, 1911, the largest copper broker in the

world, marketing, during the year 1910, as your orators are informed and believe, upwards of five hundred million pounds of copper.

That by said month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company, or of enough thereof so as that it controls the said United Metals Selling Company, of which the before-mentioned John D. Ryan has become the president, and that through the said United Metals Selling Company the said Amalgamated Copper Company controls the sale of the copper product not only of the mines of the said Anaconda Copper Mining Company, after the transfers hereinbefore referred to, and of the other companies so as aforesaid controlled by the Amalgamated Copper Company, but of the product of most of the producing mines of the United States.

That this suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

For asmuch as your orators can have no adequate relief, except in this court, and to the end, therefore, that the defendants may, if they can show why your orators should not have the relief hereby prayed, and may make a full disclosure and discovery of the matters aforesaid, and according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to the matters hereinbefore stated and charged; but not under

oath an answer under oath being hereby expressly waived.

That it be by the court adjudged and decreed that the said deed so as aforesaid in form executed by the said Alice Gold and Silver Mining Company to the defendant Anaconda Copper Mining Company bearing date the 31st day of May, 1910, is null and void, and that the defendant Anaconda Copper Mining Company be required to deliver up the same for cancellation, and that the court adjudge and direct that the certificates of stock of the Anaconda Copper Mining Company issued to the said Alice Gold and Silver Mining Company in payment for the same be returned to the said Anaconda Copper Mining Company, together with any dividends or profits that may have been paid to the said Alice Gold and Silver Mining Company thereon; that the defendants and each of them be restrained and enjoined from disposing or attempting to dispose of any of the stock of the said Anaconda Copper Mining Company so delivered to the said Alice Gold and Silver Mining Company in pretended payment for the property of the said last named company until the final determination of this action. That the defendants be likewise enjoined and restrained, pending the determination of this action, from prosecuting any proceedings for the dissolution of the said Alice Gold and Silver Mining Company, and particularly from prosecuting further, during the pendency of this action, the proceedings so as aforesaid pending in the District Court of the Third Judicial District of

the State of Utah, in and for the County of Salt Lake, and that your orators have such further and other relief as to the court may seem just, including their costs and reasonable counsel fees for the prosecution of this action, the amount of which shall be fixed and determined by the court.

May it please your Honors to grant unto your orators a writ of subpoena of the United States of America, directed to the said Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, commanding them on a day certain to appear and answer unto this bill of complaint, and to abide and perform such order and decree in the premises as to the Court shall seem proper and required by the principles of equity and good conscience.

WALSH & NOLAN,
Solicitors for Complainants.

T. J. WALSH,
Counsel for Complainants.

United States of America,
District of Montana,—ss.

T. J. Walsh being duly sworn deposes and says that he is one of the solicitors for the above named complainants, and makes this verification on their behalf; that he has read the foregoing complaint and knows the contents thereof and that the same is true to the best of his knowledge, information and belief.

Affiant further says that he makes this verification for the reason that none of the complainants

are or reside within the County of Lewis and Clark, State of Montana, in which county and state affiant is and resides.

T. J. WALSH.

Subscribed and sworn to before me this 28th day of December, 1911.

J. R. WINE, JR.,

Notary Public for the State of Montana, residing at Helena.

[N. S.] My commission expires Nov. 13, 1914.

Filed June 29, 1912, Geo. W. Sproule, Clerk.

That on the 6th day of November, 1911, upon the filing of the original bill herein, a subpoena in equity was duly issued in the words and figures following, to-wit:

[Subpoena.]

Circuit Court of the United States, Ninth Judicial Circuit, District of Montana.

IN EQUITY.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, GREETING:

To Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry,
Defendants.

YOU ARE HEREBY COMMANDED, That you be and appear in said Circuit Court of the United States aforesaid, at the Court Room in FEDERAL BUILDING, HELENA, MONTANA, on the 4th day of December, A. D. 1911, to answer a Bill of Complaint exhibited against you in said Court by Peter

Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Ferdinand Kurzman, John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable Edward D. White, Chief Justice of the United States, this 6th day of November, in the year of our Lord one thousand nine hundred and eleven, and of our Independence the 136,

[Court Seal]

GEO. W. SPROULE,

Clerk.

By C. R. GARLOW,

Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12,
SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED to enter your appearance in the above suit, on or before the first Monday of December, next, at the Clerk's Office of

said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

Messrs. WALSH & NOLAN,

Solicitors for Complainants, Helena, Montana.

MARSHAL'S RETURN.

United States of America,
District of Montana.

I HEREBY CERTIFY AND RETURN, that I received the within Subpoena in Equity on the seventh day of November, 1911, and duly served the same on the Anaconda Copper Mining Company a corporation, by delivering to and leaving with Cornelius F. Kelley, Secretary of said defendant corporation, at Butte, Silver Bow County in said district, on the seventh day of November, 1911, a copy thereof to which was attached a certified copy of the Bill of Complaint filed herein. I further certify that I served said Subpoena in Equity on the Alice Gold and Silver Mining Company a Corporation, by delivering to and leaving with Howard F. Buzzo, the Manager in charge of the Alice mines and property at Walkerville, Montana, at Walkerville Silver Bow County in said District, on the tenth of November, 1911, a copy thereof. I further certify that after diligent search and inquiry I was unable to find John D. Ryan, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in said District.

Dated Butte, Montana, November 11, 1911.

WILLIAM LINDSAY,

United States Marshal.

By J. G. SANDERS, Deputy.

Filed Nov. 13th, 1911. Geo. W. Sproule, Clerk.

Thereafter, on December 5th, 1911, a subpoena toties quoties was duly issued herein in the words and figures following, to-wit:

[**Subpoena, Toties Quoties.**]

*Circuit Court of the United States, Ninth Judicial
Circuit, District of Montana.*

IN EQUITY.

The President of the United States of America,
Greeting:

To Anaconda Copper Mining Company, a corporation,
Alice Gold and Silver Mining Company,
a corporation, and John D. Ryan, J. W. Allen,
W. D. Thornton, A. C. Carson and G. S. Ferry,
Defendants.

YOU ARE HEREBY COMMANDED, That you
be and appear in said Circuit Court of the United
States aforesaid, at the Court Room in FEDERAL
BUILDING, HELENA, MONTANA, on the 1st day
of January, A. D. 1912, to answer a Bill of Com-
plaint exhibited against you in said Court by Peter
Geddes, Joseph R. Walker, Joseph S. Baer, Henry
S. Everett, Margaret Ann Meehan, Eugene Blum,
Isaac Blum, Edward Blum, Isador Baer, Alphons
Dreyfoos; Alphons Dreyfoos, Eugene Blum, David
C. Goldenberg, Eugene Bascho, co-partners doing
business under the firm name and style of Drey-
foos, Blum & Company; Ferdinand Kurzman,

John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, this 5th day of December, in the year of our Lord one thousand nine hundred and eleven, and of our Independence the 136.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

Memorandum Pursuant to Rule 12, Supreme Court U. S. YOU ARE HEREBY REQUIRED to enter your appearance in the above suit on or before the first Monday of January next, at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

WALSH & NOLAN,

Solicitors for Complainants, Helena, Montana.

UNITED STATES MARSHAL'S OFFICE.

MARSHAL'S RETURN.

United States of America,

District of Montana.

I HEREBY CERTIFY that I received the within subpoena in Equity on the 6th day of December,

1911, at Butte Montana, and duly served the same on John D. Ryan individually, by delivering and leaving a copy thereof at the residence of said John D. Ryan in the hands of one Anna Radin, an adult person in charge of said residence, at Butte, Silver Bow County in said District, on the 6th day of December, A. D. 1911.

I further certify that after diligent search, I was unable to find J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry in said District.

WILLIAM LINDSAY,

United States Marshal.

By J. G. SANDERS, Deputy.

Dated Butte, Montana, December 7th, 1911.

Filed Dec. 9th, 1911, Geo. W. Sproule, Clerk.

Thereafter, on April 18, 1912, an additional subpoena toties quoties was duly issued herein, in the words and figures following, to-wit:

[Additional Subpoena, Toties Quoties.]

*United States of America, District Court of the
United States, District of Montana.*

IN EQUITY.

The President of the United States of America,
Greeting:

To Alice Gold and Silver Mining Company, a corporation, Defendant.

YOU ARE HEREBY COMMANDED, That you be and appear in said District Court of the United States aforesaid, at the Court Room in Federal Building, Helena, Montana, on the third day of

June, A. D. 1912, to answer a Bill of Complaint exhibited against you in said Court by Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Ferdinand Kurzman, John Frankenheimer, Seymour P. Kurzman, Abin L. Gutman and Walter Frank, co-partners doing business under the firm name and style of Kurzman & Frankenheimer; Leopold Freund and Alice Frey, Complainants, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of FIVE THOUSAND DOLLARS.

WITNESS, the Honorable Geo. M. Bourquin, Judge of the District Court of the United States for the District of Montana, this 18th day of April in the year of our Lord one thousand nine hundred and twelve and of our Independence the 136.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 12, SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED, to enter your appearance in the above suit on or before the first Monday of June next, at the Clerk's Office of said Court, pursuant to said Bill; otherwise the said

Bill will be taken pro confesso.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

WALSH & NOLAN,

Solicitors for Complainants,

Helena, Montana.

UNITED STATES MARSHAL'S OFFICE,
DISTRICT OF MONTANA.

I HEREBY CERTIFY, that I received the within writ on the twentieth day of April, 1912, and personally served the same on the 25th day of April, 1912, on the Alice Gold and Silver Mining Company, a corporation, by delivering to and leaving with John D. Ryan, President of said defendant corporation, named therein personally at Butte in the County of Silver Bow in said district, a copy thereof.

WILLIAM LINDSAY,

U. S. Marshal.

By J. G. SANDERS,

Deputy.

Butte, April 25, 1912.

Filed April 27, 1912. Geo. W. Sproule, Clerk.

Thereafter, on March 7, 1913, the Answer of defendant A. C. M. Co. to the amended bill of complaint was duly filed herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

Answer of Defendant, ~~Alice Gold and Silver~~ ^{Anaconda Copper} Mining

Company, a Corporation, to the Amended

Bill of Complaint.

This defendant, Anaconda Copper Mining Company, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore asks that Compainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the Territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Al-

phons Dreyfoos, Dreyfoos, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer on May 27, 1910, was the owner of 300 shares, and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold & Silver Mining Company; and denies each and every allegation and each and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them of shares of the capital stock of the said Alice Gold and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Com-

pany was and had been for many years prior thereto, the owner of extensive mining ground, situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; denies that the same aggregated about 340 acres or any greater number of acres than 145; and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ores or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of Butte, Silver Bow County, State of Montana, and alleges that so far as is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that

the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value or \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment for the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein, were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less, so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as dividends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897, have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and

refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. The machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the working had been carried, so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousands of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable

character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independent companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein,

including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Coluse Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company, and denies that the stock of said last named companies was held practically by the same persons, and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named

ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sales thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the time either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion of all of the mineral output of the City of Butte

or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other times, certain or any individuals or individual, with a view to controlling in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the purposes aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company, but admits that certain persons organized a corporation, known as the Amalgamated Copper Company, having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies

that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of 75,000,000.00, and that about or prior to the month of June, 1911, it acquired all of the stock of the Washoe Copper Company and all of the capital stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Mining Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but alleges that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and denies that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot

Silver and Copper Mining Company stock than is hereinabove stated; and denies that it at any time acquired any more than four-fifths of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically of the stock of the above mentioned Colorado Mining and Smelting Company; but denies that any of such capital stock was acquired by issuing in exchange thereof its own stock, but alleges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on

the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock in the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interest in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte, became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Mining Company, among others, the Corra-Rock Island Mining Company passed to a corporation known as the Red Metal Mining Company with a capital stock of \$11,000,000.00 the purchase price of said properties being approximately \$10,500,000.00 and other valuable considerations, but deny that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the

said amended bill of complaint, or otherwise, and denies that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior to or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in the western part of the United States, excepting its interests in the Butte corporations herein admitted and 50,000 shares of the capital stock of the Butte Coalition Mining Company, a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and denies that the said Amalgamated Copper Company at any time became the owner of any of the capital stock of the International Smelting and Refining Company, the corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out

any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company, and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should become vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually or at all any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a

potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever; and this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were as hereinafter alleged.

The copper mines of the Butte district had been worked for many years, and in the prosecution of mining operations the said working had been extended to great depths into the earth, so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result

of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary separate organizations, plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventilation and drainage of said mines became an exceedingly complex and expensive undertaking, and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in ^{the} Butte district; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at vary-

ing angles the surface properties belonging to other corporations. That at increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the necessity of determining the extra-lateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing

state of facts are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had nor have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative proposition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

The defendant Anaconda Copper Mining Company further alleges that the value of the said 30,000 shares of its said capital stock was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in ex-

cess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in the possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company, was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property.

This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but denies that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and allege that there are certain mining properties which were retained by said Clark interests, and which did not pass by said

sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00, and denies that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining Company; and alleges that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other properties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but denies that said stock was so increased, or increased at all with a view to purchasing the said properties of the Clark companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Development Company, the successor in

interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Mining Company and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the owner of practically all of the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company; and admits that the Anaconda Copper Mining Company by such purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and alleges that there were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations or any of them to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock together with other stockholders voted in favor of such

transfers at the meetings authorizing such transfers held in pursuance of the law; denies that prior to the year 1910, or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all, caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges that the defendant John D. Ryan, personally and for himself alone, and not as the representative of any corporation or person whatsoever, was in the year, 1906, interested in an option, given by stockholders of the Alice Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and denies that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admits that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the

officers and representatives of said Butte Coalition Company. Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company, or either of them, had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise, except as hereinafter stated, have been in possession for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or any properties of the said Alice Gold and Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company, has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Sil-

ver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz: It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there would have remained no reason for maintaining the organization of said Alice Company, and at a stockholders' meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourths of the capital stock of said Alice Company, and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper

Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company to which each of said stockholders should be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommodating such stockholders, on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company, would procure capital stock of the said Anaconda Copper Mining Company and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owing stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Cop-

per Company 353,446 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the purposes above stated and for no other purpose.

Admits that prior to the 27th day of May, 1912, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of the said companies; and denies that

said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint, but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of 310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by one E. S. Ferry and one L. O. Evans, but admit that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S.

Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Admits and alleges that at the said stockholders' meeting, so called and held, a resolution was presented and adopted, confirming and ratifying the previous action of the Board of Directors in authorizing and entering into a contract for the transfer of, and authorizing the transfer of all of the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares

for which they had proxies in favor of the said resolution, and admits that all of the complainants who were present or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Gedes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000.00 and at

various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00, or that any of said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other shareholders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of

the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies that in so doing or in taking any other acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of the stockholder's meetings, and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen, its Secretary, in the name of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which

said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was ^{so} made ^{executed} and delivered in consideration of the said Thirty Thousand shares of stock of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stock-

holder's meetings of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employee or employees of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalgamated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or anyone acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but deny that said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the

affairs of both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolution duly adopted at stockholders' and directors' meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the stockholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity with the laws of the State of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under an arrangement entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said

copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, but admits that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed upwards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said

United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

Wherefore, this defendant having fully answered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

ANACONDA COPPER MINING CO.

[Seal] By C. F. KELLEY, Its Vice President.
C. F. KELLY, L. O. EVANS,
W. B. RODGERS and D. GAY STIVERS,
Its Attorneys and Counsel, 616 Hennessy Bldg.,
Butte, Mont.

Due and personal service of the foregoing answer, and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on March 7th, 1913, the answer of defendant Alice Gold and Silver Mining Company, to the amended bill, was duly filed herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

Answer of Defendant, Alice Gold and Silver Mining Company, a Corporation, to the Amended Bill of Complaint.

This defendant, Alice Gold and Silver Mining Company, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as it is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore asks that Complainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Sil-

ver Mining Company is a corporation which was organized under the laws of the territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized under the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Alphons Dreyfoos, Dreyfoss, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company, as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer, on May 27, 1910, was the owner of 300 shares and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant

Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold and Silver Mining Company; and denies each and every allegation and each ~~each~~ and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them or shares of the capital stock of the said Alice Gold and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Company was and had been for many years prior thereto, the owner of extensive mining ground situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; denies that the same aggregated about 340 acres or any greater number of acres than 145; and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ore or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of

a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of Butte, Silver Bow County, State of Montana, and alleges that so far as is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value of \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment for the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein, were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became

very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less, so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as dividends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897 have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. That the machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the workings had been carried, so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing

of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousand of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independant companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported

from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Colusa Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such com-

panies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company; and denies that the stock of said last named companies was held practically by the same persons, and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sale thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the

world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the times either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion or all of the mineral output of the City of Butte or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other time certain or any individuals or individual, with a view to controlling in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when

the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the purposes aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company; but admits that certain persons organized a corporation, known as the Amalgamated Copper Company; having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of \$75,000,000.00, and that about or prior to the month of June, 1901, it acquired all of the stock of the Washoe Copper Company and all of the capital

stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Mining Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but alleges that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and denies that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot Silver and Copper Mining Company stock than is hereinabove stated; and denies that it at any time acquired any more than 4-5 of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action, the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Sil-

ver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company; but denies that any of such capital stock was acquired by issuing in exchange thereof its own stock, but alleges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock of said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interested in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said

Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Company, among others, the Carro-Rock Island Mining Company, passed to a corporation known as the Red ~~Betal~~^{Metal} Mining Company with a capital stock of \$11,000,000.00, the purchase price of said properties being approximately \$10,500,000.00 and other valuable considerations, but denies that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the said amended bill of complaint, or otherwise, and denies that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in

the western part of the United States, excepting its interests in the Butte corporations herein admitted, and 50,000 shares of the capital stock of the Butte Coalition Mining Company, a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and denies that the said Amalgamated Copper Company at any time became the owner of any of the capital stock of the International Smelting and Refining Company, ^{the} a corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company, and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should be come vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which

owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually or at all, any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever.

And this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were, as hereinafter alleged.

The copper mines of the Butte district had been

worked for many years, and in the prosecution of mining operations the said workings had been extended to great depths into the earth so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary, separate organization plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventila-

tion and drainage of said mines became an exceedingly complex and expensive undertaking and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in the Butte District; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at varying angles the surface properties belonging to other corporations. That at increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the

necessity of determining the extralateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing state of facts are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind, although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had, nor

have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative proposition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

This defendant further alleges that the value of the said 30,000 shares of said capital stock of the Anaconda Copper Mining Company, was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in excess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property.

This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant, Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but denies that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and alleges that there are certain mining properties which were retained by said Clark interests, and which did not pass by said sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00 and denies that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining

Company; and alleges that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other properties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but denies that said stock was so increased or increased at all, with a view to purchasing the said properties of the Clark Companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, the successor in interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Copper Mining Company and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the

owner of practically all the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company; and admits that the Anaconda Copper Mining Company by such purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and alleges that were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations, or any of them, to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock, together with other stockholders voted in favor of such transfers at the meetings authorizing such transfers held in pursuance of the law. Denies that prior to the year 1910 or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant, John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges

that the defendant, John D. Ryan, personally and for himself alone, and not as the representative of any corporation or person whatsoever was in the year 1906, interested in an option, given by stockholders of the Alice Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and denies that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admits that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the officers and representatives of said Butte Coalition Company. Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company or either of them had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise except as hereinafter stated have been in possession

for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or or any property of the said Alice Gold and Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Silver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz: It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with

the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there would have remained no reason for maintaining the organization of said Alice Company; and at a stockholder's meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourth of the capital stock of said Alice Company, and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah, to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company, to which each of said stockholders should be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommo-

dating such stockholders, on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company would procure capital stock of the said Anaconda Copper Mining Company, and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owning stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Copper Company 353,446 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the pur-

poses above stated and for no other purpose.

Admits that prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution, and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of the said companies; and denies that said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint, but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of 310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by the said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by one E. S. Ferry and one L. O. Evans, but admits that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S. Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Admits and alleges that at the said stockholder's meeting so called and held, a resolution was presented and adopted confirming and ratifying the previous action of the Board of Directors, in authorizing and entering into a contract for the transfer of, and authorizing the transfer of, all of the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for, or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares for which they had proxies in favor of the said resolution, and admits that all of the complainants who were present or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said

resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Geddes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000 and at various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00; or that any of the said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other share-

holders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company, nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting, and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and

to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies, in so doing or in taking any other acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of stockholder's meetings and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen, its Secretary, in the name of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was so made, executed and delivered in consideration of the said Thirty Thousand shares of stock

of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stockholder's meeting of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employe or employes of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalga-

mated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or anyone acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but denies that said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the affairs of both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolutions duly adopted at stockholders and directors meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of

its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the stockholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity with the laws of the State of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, and admit that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed up-

wards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a

case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof, in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

WHEREFORE, this defendant having fully answered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to its best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with its reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

ALICE GOLD AND SILVER MINING CO.

By Roy S. Alley, Its Assistant Secretary.

C. F. KELLEY, L. O. EVANS,

W. B. RODGERS and D. GAY STIVERS,

[Seal]

Its Attorneys and Counsel,

616 Hennessy Bldg., Butte, Montana.

Due and personal service of the foregoing answer and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on March 7th, 1913, the answer of

defendant John D. Ryan, to the amended bill, was duly filed herein, in the words and figures following, to-wit:

[*Same title of Court and Cause.*]

Answer of Defendant John D. Ryan, to the Amended Bill of Complaint.

This defendant, John D. Ryan, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the amended bill of complaint herein, comes and answers thereto, or to so much thereof as he is advised is material to be answered, and says:

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether the complainants Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, or either of them, are or were co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, or otherwise, and therefore ask that Complainants be required to produce proof of the said allegations.

Admits that the defendant Alice Gold and Silver Mining Company is a corporation which was organized under the laws of the territory of Utah on or about the 6th day of March, 1880, with powers and for the purposes, set forth in its articles of incorporation, among said purposes and powers being those specified in said amended bill of complaint on page 2 thereof.

Admits that the defendant Anaconda Copper Mining Company is a corporation organized un-

der the laws of the State of Montana in the year 1895, for the purposes set forth in its articles of incorporation, among such purposes being those specified in the amended bill of complaint herein.

Admits that complainants Peter Geddes, Margaret Ann Meehan, Eugene Blum, Edward Blum, Alphons Dreyfoos, Dreyfoos, Blum & Company, Leopold Freund and Alice Frey are, and for more than two years last past have been the owners of shares of the capital stock of the said Alice Gold and Silver Mining Company as alleged in said amended bill of complaint.

Admits that the complainant Joseph R. Walker was on May 27, 1910, and ever since has been the owner of 360 shares, the complainant Joseph S. Baer on May 27, 1910, was the owner of 300 shares, and is now the owner of 400 shares, the complainant Henry S. Everett on May 27, 1910, was the owner of 400 shares, and is now the owner of 900 shares, the complainant Isaac Blum on May 27, 1910, was the owner of 1400 shares, and is now the owner of 1600 shares; that the complainant Isador Baer is now the owner of 200 shares, but denies that on the 27th day of May, 1910, he was the owner of any shares whatsoever of the capital stock of the said Alice Gold & Silver Mining Company; and denies each and every allegation and each and every part thereof in said amended bill of complaint contained concerning the ownership by orators or complainants or any of them of shares of the capital stock of the said Alice Gold

and Silver Mining Company except as hereinabove admitted.

Admits that prior to the granting and conveying of all of its property to the defendant Anaconda Copper Mining Company on the 31st day of May, 1910, the said Alice Gold and Silver Mining Company was and had been for many years prior thereto, the owner of extensive mining ground, situate in the County of Silver Bow, State of Montana, and of improvements thereon and of certain property used in connection therewith; deny that the same aggregated about 340 acres or any greater number of acres than 145, and denies that during the period of more than ten years last past the said corporation has been engaged in the prosecution of any business of mining or reducing ores or selling or disposing of the materials extracted therefrom or other products except on a very inconsequential scale; denies that the property or any property of the said corporation is now or at any time has been of the value of \$15,000,000.00, or that the same is now or at any time has been of a value of more than \$1,000,000.00, and alleges that the value of the property of the said Alice Company is now and for more than ten years last past has been of an almost wholly speculative character; admits that the said mining claims of the said Alice Company have been extensively worked and ores of large value taken therefrom; denies that said claims are within the rich mineral region in or adjacent to the City of

Butte, Silver Bow County, State of Montana, and allege that so far as it is shown by any development made to the present time and so far as is at present known the said claims are without the rich mineral region lying in and about the City of Butte.

And this defendant alleges the facts to be that the said Alice Gold and Silver Mining Company was incorporated in the year 1880 with a capital stock consisting of 400,000 shares of the par value of \$25.00 per share. That all or all but a very few shares of the capital stock of the said corporation were issued in payment of the mining claims acquired by it. That soon after its incorporation, mining operations were commenced by said Alice Company upon its said mining claims and quantities of ore bearing silver and gold, their value being mainly in the silver contained therein were extracted. That mining operations were conducted by said company on a somewhat extensive scale, but as the said ore bodies were mined out and the workings attained depth, the values of the ore became gradually less and the ores became very refractory and base and difficult and expensive of reduction, and that about the year 1893 the price of silver became very much less so that it became impossible to work or mine the said properties at a profit, and that the total proceeds derived by said Alice Company from its mining operations and paid to its stockholders as dividends or available as divi-

dends has been during the whole period of its existence less than \$1,100,000.00. That the mining operations of said company conducted since the year 1897, have resulted in a loss to said company. In the early history of said Alice Company, it owned and operated a large stamp mill for the reduction of its ores, but that in later years as the said ores became base and refractory and of low grade, the said mill became useless and prior to the year 1907, was destroyed by fire. That the machinery and other equipment used in and about said Alice mines in operating the same became more or less worn out and obsolete, and was inadequate to operate the said properties at the depths to which the workings had been carried so that on May 27, 1910, and for some period prior thereto the assets of the said Alice Company in the way of improvements, machinery or other property used in connection with its mining claims, were of very small value. That the said mining claims formerly owned by the said Alice Company have not now and have not had for a period of more than ten years last past any ores or ore bodies developed or showing of any commercial value, the same being of such low grade and value and of such a base and refractory character that they could not be profitably worked under any known process. Of the property formerly owned by said Alice Company, there is a considerable portion of the same which is undeveloped and which may develop ore bodies of value, but that to develop

the same, so as to make available any ore bodies which may be contained within them, it will be necessary to conduct developments on a very extensive scale and to very great depths, necessitating the expenditure of large sums of money, probably aggregating many hundreds of thousands of dollars. That on May 27, 1910, the said Alice Company, because of the unprofitable character of its operations for a number of years, had no funds, and had incurred indebtedness in the necessary care and maintenance of its property, and that said indebtedness on the 27th day of May, 1910, was in excess of the sum of \$35,000.00, to meet which the said Alice Company had no funds or assets except its mining claims.

Admits that prior to the year 1899, there were a number of independent companies engaged in mining at the City of Butte and in extracting the ores from claims within the mining region in and about the City of Butte and in reducing the same and in selling and disposing of the minerals extracted from the same, the greater portion of which were by the said companies transported from the City of Butte, in the State of Montana, to the City of New York, and other markets in the eastern states and beyond the State of Montana, where the same were by the said companies sold and disposed of, and that among other companies so engaged in such business were the defendants Anaconda Copper Mining Company, the Alice Gold and Silver Mining Company, the Washoe

Copper Company, the Boston and Montana Consolidated Copper and Silver Mining Company, the Butte and Boston Consolidated Mining Company, the Parrott Silver and Copper Mining Company, the Colorado Mining and Smelting Company, a group of companies known collectively as the Heinze companies, by reason of the fact that one F. Augustus Heinze was the chief factor therein, including the Montana Ore Purchasing Company, Johnstown Mining Company, Minnie Healey Mining Company, the Nipper Consolidated Mining Company and the Belmont Mining Company, and another group of corporations known as the Clark corporations, owing to the fact that one W. A. Clark was the chief factor in said companies, being composed of the Colusa Parrot Mining and Smelting Company and the Original Mining Company; and denies that all of the said corporations were at any time competing with each other in the sale of the products of the mines so owned and operated by them as aforesaid in the said markets within the United States or beyond the State of Montana, where said products were by such companies transported for sale, save that no competition existed among the corporations comprising the groups hereinbefore referred to, and save also that no competition existed between the said Anaconda Copper Mining Company and the said Washoe Copper Company; and denies that the stock of said last named companies was held practically by the same persons,

and defendant alleges the fact to be that the operations of the said Alice Company in and for several years prior to the year 1899 had been on a small scale, and that the only products of value at any time produced by the said Alice Company consisted of silver and gold and that no copper was ever produced or marketed from the mines of the said Alice Company. That none of the said corporations above named ever sold its copper or other products directly to the consumer, but that during all of the years prior to 1899, as well as since, because of the fact that it has always been the custom in the copper trade for sales of copper to be made subject to delivery at any place in the world designated by the purchaser, it has been necessary that the sales thereof be handled by large concerns, and that the copper and other products of said mining companies have always been disposed of by being consigned to one or more of the large selling agencies maintained and conducted in the United States.

Admits that in the year 1899, and at all times since, a large share of the copper produced in the world, and a still larger portion of that produced in the United States was and still is produced within the State of Montana from ores mined within the said mining region at and near the City of Butte; and alleges that the proportionate amount of the copper produced in the United States and in the world produced in the said Butte mining region has been growing less each year since the

year 1899, and that in the years 1910 and 1911, the Butte mines produced about 23% of the copper produced within the United States, and about 13% of the world's production; deny that during all or any of the times either since or prior to the year 1899, any individual or corporation or association that could control such corporations, or any of them, as produced the greater or any portion or all of the mineral output of the city of Butte or vicinity could by reason of such fact or otherwise or at all control the supply of copper available for use in the several states of the union or elsewhere, or could fix or regulate the price of that commodity or of any commodity or metal in the markets of the union or in any market or state whatsoever.

Denies that in the year 1899, or at any other time, certain or any individuals or individual, with a view to control in any way the production of copper or the supply thereof or to fix or regulate the price thereof in any market or at any place whatsoever, or to suppress competition in the sale thereof, or particularly or at all of the products of any of the mines at or near the City of Butte when the same should be transported for sale to any market in the eastern states or elsewhere, or at any time or under any conditions whatsoever or with any view or purpose whatsoever, entered into any conspiracy in restraint of trade or commerce among the several or any states or otherwise or at all; and deny that for any of the pur-

poses aforesaid or for the purpose of carrying out any conspiracy the said or any individuals organized under the laws of the State of New Jersey a corporation called the Amalgamated Copper Company, but ~~admits~~^{admits} that certain persons organized a corporation, known as the Amalgamated Copper Company, having powers as recited in its articles of incorporation, a part of which are stated in said amended bill of complaint. Denies that it was intended by the said persons, who organized the same, that said corporation should acquire by purchase or otherwise enough of the stocks of corporations engaged in mining or particularly in copper mining at or near the City of Butte as that it could control said corporations, and through the control of such corporations or otherwise regulate the supply or fix the price of copper in the markets or any market of the world or at any other place or in any other manner.

Admits that the said Amalgamated Copper Company was organized with a capital stock of \$75,000,000.00, and that about or prior to the month of June, 1901, it acquired all of the stock of the Washoe Copper Company and all of the capital stock of the Big Blackfoot Milling Company, a lumber company engaged in manufacturing timber, a portion of which was used in the Butte mines; and admits that it acquired approximately 51% of the capital stock of the Anaconda Copper Mining Company, and approximately 51% of the capital stock of the Parrot Silver and Copper Min-

ing Company; and denies that it acquired any of such capital stock in exchange for the capital stock of it, the Amalgamated Copper Company, but allege that the said Amalgamated Copper Company acquired all of the said capital stock by outright purchase; and deny that the said Amalgamated Copper Company acquired any larger percentage of the Anaconda Copper Mining Company or of the Parrot Silver and Copper Mining Company stock than is hereinabove stated; and deny that it at any time acquired any more than 4-5 of the capital stock of the Hennessy Mercantile Company, a trading company, engaged in general merchandise and dealing extensively with the men employed in the said and other mines at Butte, Montana, and alleges that long prior to the commencement of this action the said Amalgamated Copper Company sold and disposed of all its capital stock in said Hennessy Mercantile Company. Admits that on or about June 6, 1901, the capital stock of the Amalgamated Copper Company was increased to \$155,000,000.00, and that thereafter it acquired all but a few hundred shares of the stock of the said Boston and Montana Consolidated Copper and Silver Mining Company and the Butte and Boston Consolidated Mining Company, and acquired all or practically all of the stock of the above mentioned Colorado Mining and Smelting Company; but deny that any of such capital stock was acquired by issuing in exchange thereof its own stock, but al-

leges that the said stock was acquired by outright purchase. Admits that at the time of the organization of the said Amalgamated Copper Company, a bitter and protracted litigation had been in progress between said Boston and Montana Consolidated Silver Mining Company and the said Butte and Boston Consolidated Mining Company on the one side and the said F. Augustus Heinze and one or more of the said Heinze companies on the other side, and that upon the acquisition by the said Amalgamated Copper Company of stock the said Boston and Montana Consolidated Copper and Silver Mining Company and the said Butte and Boston Consolidated Mining Company, the said litigation involved the said Amalgamated Copper Company as a stockholder interested in said litigant corporations; and admits that about the year 1899, and for several years thereafter, the greater portion of the companies in which said Amalgamated Copper Company was interested, doing business at or near the City of Butte became and were also involved in litigation with the said Heinze interests, and admit that all the properties of certain of the said Heinze companies together with the properties of certain companies organized by Heinze after the organization of the said Amalgamated Copper Company, among others, the Corra-Rock Island Mining Company, passed to a corporation known as the Red Metal Mining Company with a capital stock of \$11,000,000.00, the purchase price of said

properties being approximately \$10,500,000.00 and other valuable considerations but deny that the said Red Metal Mining Company was organized by the Amalgamated Copper Company or by parties intimately associated with it, or that the acquisition of the said Heinze properties or any of them was made or carried out or accomplished in the pursuit of any purpose with which the said Amalgamated Copper Company was organized as set out in the said amended bill of complaint, or otherwise, and deny that the acquisition of the said Heinze properties by the said Red Metal Mining Company had anything whatsoever to do in any manner with the Amalgamated Copper Company or its purposes.

Denies that prior or since the year 1910, or at any other time, the said Amalgamated Copper Company had or has become the owner of practically all or any of the stock of the said Red Metal Mining Company, or had likewise or at all become the owner of a majority or any of the stock of various or any companies engaged in the business of mining or smelting copper or other ores in the State of Utah or elsewhere in the mining region in the western part of the United States, excepting its interests in the Butte corporations herein admitted, and 50,000 shares of the capital stock of the Butte Coalition Mining Co., a corporation having issued capital stock of 1,000,000 shares of a par value of \$15.00 per share; and deny that the said Amalgamated Copper Company at any

time became the owner of any of the capital stock of the International Smelting and Refining Company, the corporation referred to in the amended bill of complaint; and denies that any interests which have been acquired by the said Amalgamated Copper Company in any corporation or company, or any interest whatsoever acquired by the said Amalgamated Copper Company have been so acquired with a view more completely or at all to carry out any of the purposes set forth in the said amended bill of complaint except the carrying on of the lawful and legitimate purposes of its incorporation as specified in its articles of incorporation.

Admits that during the year 1910, it was deemed advisable by the managing officers and those directing the affairs of the Amalgamated Copper Company. and alleges that it was also deemed advisable by other stockholders in the Anaconda Copper Mining Company, that the defendant the Anaconda Copper Mining Company should become vested with the title to the properties of the various companies in which the Amalgamated Copper Company was a stockholder and which owned properties adjoining each other at Butte, Montana, but denies that such conclusion was taken or view reached with the same purpose or to carry out more effectually, or at all, any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of com-

plaint, or to carry out more effectually or otherwise any plan or purpose of the said organization of the Amalgamated Copper Company as charged in the amended bill of complaint, or that it was deemed advisable or planned to have the said defendant Anaconda Copper Mining Company vested with the title to all mining properties located at or near said City of Butte which by development or operation might give rise to competition in the production or sale of copper or other metals found in association with it, or that might be a potential or other competitor in the production or sale of copper or any other product, and alleges that possible competition or any question of competition as to copper produced in the Butte District did not enter into or have anything to do with any plan or purpose in connection with the acquisition by the Anaconda Copper Mining Company of any properties whatsoever.

And this defendant alleges on the contrary that the sole reasons which led to the acquisition by the defendant Anaconda Copper Mining Company of the properties of the said corporations above specified were, as hereinafter alleged.

The copper mines of the Butte District had been worked for many years, and in the prosecution of mining operations the said workings had been extended to great depths into the earth, so that the cost of extracting the ore containing copper and other valuable metals was constantly increasing

as was also the cost of keeping open the said workings and properly ventilating and draining the same.

Defendant further alleges, that up to the year 1910, all of said corporations referred to in said bill of complaint as the Amalgamated Companies had preserved their separate corporate organizations and were operated as independent mining concerns, each one possessing a separate and complete business organization, surface plants, shafts and equipment necessary to conducting operations as independent organizations. As a result of this method of conducting operations, defendant alleges that the cost of producing copper was greatly in excess of what said cost would have been if all of said corporations were merged into a single organization and the operations and business of said corporation so conducted as to eliminate the maintenance of the necessary separate organizations, plants and equipment with the attendant multiplication of different items of cost without the accomplishment of any useful or economic purpose. Defendant also further alleges, that on account of the increased underground temperature and the encountering of additional amounts of underground water, the ventilation and drainage of said mines became an exceedingly complex and expensive undertaking, and in order to properly carry out said ventilation and said drainage it became necessary that some uniform system should

be adopted under which it would be possible to drain and ventilate the entire underground mining area of the Butte district.

Defendant further alleges that all of the producing mines of said corporations are located within a comparatively small area in the Butte District; that the properties of the several corporations above referred to consist of many small and irregularly shaped mining claims; that the properties of the different corporations were contiguous to or adjacent to one another, so that in many cases the surface lines of the mining properties belonging to one corporation overlapped at varying angles the surface properties belonging to other corporations. That as increased depth in the mining operations new ore bodies were encountered having no tops or apices near the surface of the ground, and that it was impossible to fix with any degree of certainty, or without the doing of an enormous amount of development work, involving the expenditure of very large sums of money with no practical return therefrom, the title to the ownership of such underground ore bodies, and that as a result of the foregoing it became a matter of practical necessity that the titles to said underground ore bodies should be so unified that the necessity of determining the extralateral rights incident to the ownership of each individual mining claim could be eliminated. That the necessities arising out of the foregoing situation were of such a character

that they impelled the different corporations above specified to take up the matter of unifying the titles to the principal producing properties of the Butte District, and as a result therefrom and of the negotiations which were conducted for the purpose of accomplishing the unification of said titles, it resulted that in the year 1910 as aforesaid all of the foregoing above mentioned corporations conveyed the title to all of their physical properties to the Anaconda Copper Mining Company.

Defendant further alleges that some of the properties which the said Anaconda Copper Mining Company acquired by reason of the foregoing state of fact are adjacent to some of the mining claims formerly owned by the Alice Company. That it was the purpose of the said Anaconda Copper Mining Company to carry on extensive development work for the purpose of endeavoring to ascertain the location of and develop ore bodies which might lie beneath the surface of the undeveloped property so acquired by it, and that having the foregoing purpose in mind, although the said Alice Company had long ceased to be a producing company, and although the said defendant the said Anaconda Copper Mining Company, nor any of its officers, directors or agents had, nor have they now, any knowledge whatsoever of the existence of any valuable ore bodies within the limits of the property owned by the said Alice Company, or belonging to it, as a speculative prop-

osition it was deemed advisable to make an offer to the said Alice Company to purchase its properties. That as a result of the negotiations so conducted the said Anaconda Copper Mining Company offered to exchange for the title to all of the property of the said Alice Company 30,000 shares of the capital stock of the said Anaconda Copper Mining Company.

This defendant further alleges that the value of the said 30,000 shares of said capital stock of the Anaconda Copper Mining Co. was and is largely in excess of any known value possessed by the said property of the said Alice Company, and that the value of said stock was largely in excess of the amount which any other or independent purchaser would be justified in paying for said property, and that only because of the reason that the said Anaconda Copper Mining Company owned mining property in the vicinity of and adjacent to the said property of the said Alice Company, and was in the possession of underground workings from which explorations might be economically conducted for the purpose of ascertaining the values, if any, possessed by the said property of the said Alice Company was the said Anaconda Copper Mining Company justified in paying so large a price as was paid for said property. This defendant further alleges that in so far as the stockholders of the said Alice Gold and Silver Mining Company are concerned the transaction was of great benefit to them and the price paid was

largely in excess of what could have been realized by the said Alice Company from any other source or for any other purpose. Admits that in the year 1910, the defendant, Anaconda Copper Mining Company purchased certain of the properties of the corporations designated in the bill of complaint as the Clark companies, but deny that such properties so purchased included all of the properties of the before mentioned Clark companies save some small or comparatively undeveloped tracts yielding zinc and copper only in insignificant amounts, and allege that there are certain mining properties which were retained by said Clark interests, and which did not pass by said sale, which are valuable and are now comparatively large producers of zinc and copper in the Butte district. Denies that the said Anaconda Copper Mining Company paid for the said Clark properties the sum of \$12,000,000.00 or any other or greater sum than \$5,000,000.00, and deny that the purchase of said Clark properties was in connection with or had anything to do with the acquisition by the Anaconda Copper Mining Company of the properties of the various companies in which the Amalgamated Copper Company was interested or the property of the Red Metal Mining Company or the properties of the Alice Gold and Silver Mining Company; and allege that the purchase of said Clark properties was not planned or contemplated or consummated at the time the proceedings were instituted to vest the other proper-

ties above referred to in the said Anaconda Copper Mining Company. Admits that the capital stock of the Anaconda Copper Mining Company was increased in the month of March, 1910, from \$30,000,000.00 to \$150,000,000.00, but deny that said stock was so increased, or increased at all, with a view to purchasing the said properties of the Clark companies or to carrying out any purpose in connection with such purchase. Admits that all of the properties of the said Boston and Montana Consolidated Silver Mining Company, Butte and Boston Consolidated Mining Company, the Washoe Copper Company, the Trenton Mining and Developing Company, the successor in interest of the said Colorado Mining and Smelting Company, the Big Blackfoot Lumber Company, the Parrot Silver and Company, and the Red Metal Mining Company were by those corporations transferred to the said Anaconda Copper Mining Company, and admits in each instance, that the said Anaconda Copper Mining Company paid for the said property so acquired by it with its own stock issued in payment pursuant to resolutions adopted at meetings of stockholders of the said selling companies, respectively. Denies that by such purchase the Anaconda Copper Mining Company became the owner of practically all the mines at or near the City of Butte producing copper, save those of the North Butte Mining Company, and admit that the Anaconda Copper Mining Company by such

purchase became the owner of two copper smelters operating in the State of Montana, one of which had been owned by the Washoe Copper Company and the other by the Boston and Montana Consolidated Copper and Silver Mining Company, and allege that were at said times two other copper smelters operating in the State of Montana. Denies that the said Amalgamated Copper Company caused the properties of the said corporations or any of them, to be so transferred to the Anaconda Copper Mining Company, but admits that the said Amalgamated Copper Company as a stockholder in each of said corporations in which it held stock, together with other stockholders voted in favor of such transfers at the meetings authorizing such transfers held in pursuance of the law, denies that prior to the year 1910 or at any other time, the said Amalgamated Copper Company, or any of the persons managing or directing its affairs, except the defendant, John D. Ryan, acting as hereinafter stated, with any purpose whatsoever, or with any view whatsoever, or otherwise or at all caused to be acquired by a corporation known as the Butte Coalition Company or otherwise, a majority of the stock of the defendant Alice Gold and Silver Mining Company; and defendant alleges that the defendant, John D. Ryan, personally, and for himself alone, and not as the representative of any corporation or person whatsoever, was in the year 1906, interested in an option, given by stockholders of the *Alice*

Company upon stock held by them, which option was afterwards turned over to the said Butte Coalition Mining Company, or persons representing or acting for it; and deny that the Butte Coalition Company was organized by the said Amalgamated Copper Company or the said parties managing or directing its affairs or of the stock of which it or they at all or any time since its organization held or owned a majority or a controlling interest, or any of them. Admit that prior to the year 1910, the Butte Coalition Company had acquired a majority interest, to-wit, approximately 234,000 shares of the capital stock of the defendant Alice Gold and Silver Mining Company, which stood in the names of certain of the officers and representatives of said Butte Coalition Company.

Denies that the Amalgamated Copper Company or the Anaconda Copper Mining Company or either of them had or has at any time controlled or dominated the business or affairs of the said Alice Gold and Silver Mining Company or through their or any of their servants, agents or representatives have elected boards or a board of directors or any directors of the said Alice Gold and Silver Mining Company, or through such board of directors or otherwise, except as hereinafter stated have been in possession for more than two years last past or any other period of all or any of the mining properties of the said defendant Alice Gold and Silver Mining Company, and denies that said or any properties of the said Alice Gold and

Silver Mining Company are, so far as defendants have any knowledge or information, rich in ores of zinc or copper or gold or silver or any other metal. Admits that since the purchase by and conveyance to the Anaconda Copper Mining Company of the properties of the Alice Gold and Silver Mining Company on the 31st day of May, 1910, the defendant Anaconda Copper Mining Company has been in possession of the properties formerly owned by the said Alice Gold and Silver Mining Company.

This defendant alleges that neither the Amalgamated Copper Company nor the Anaconda Copper Mining Company has ever been the owner or holder of any stock in the said Alice Gold and Silver Mining Company, excepting that subsequent to the 20th day of December, 1911, the Amalgamated Copper Company acquired certain of the stock of the said Alice Gold and Silver Mining Company under the circumstances, as follows, viz; It was the original plan of the stockholders and officers of the said Alice Gold and Silver Mining Company in the event of a transfer by said Alice Company of all of its properties to the Anaconda Copper Mining Company to dissolve by proceedings taken in accordance with the laws of the State of Utah, the said Alice Gold and Silver Mining Company, and to distribute its assets, to-wit, the said Thirty Thousand shares of stock of the Anaconda Copper Mining Company, among the stockholders of the said Alice Company, as there

would have remained no reason for maintaining the organization of said Alice Company, and at a stockholder's meeting of said Alice Company duly called and held such dissolution was voted by the holders of a very large majority, to-wit, practically three-fourths of the capital stock of said Alice Company and in accordance therewith proceedings were instituted in the courts of Salt Lake County, Utah, to obtain a decree of dissolution. Some of the complainants in this action appeared in that proceeding and objected to the dissolution of the company and subsequently filed this action, and in this action applied for an injunction pendente lite to prevent the distribution by the Alice Company of the shares of the stock of the Anaconda Copper Mining Company held by it. While this suit and such application for a temporary injunction therein were pending, numerous shareholders of the Alice Company became anxious to have divided among the stockholders of the Alice Company the capital stock of the Anaconda Copper Mining Company, to which each of said stockholders would be entitled, and numerous inquiries and importunities were received by the officers of said Alice Company to this end. For the purpose of accommodating such stockholders on or about December 20, 1911, the said Amalgamated Copper Company proposed to the stockholders of the Alice Gold and Silver Mining Company that it, the Amalgamated Copper Company, would procure capital stock of the said Anaconda

Copper Mining Company, and exchange such Anaconda Copper Mining Company stock for the stock of the Alice Gold and Silver Mining Company, upon the same basis that the said Anaconda Company stock held by said Alice Company would be by law distributed among its shareholders in case of a legal dissolution, that is, giving to each Alice Company shareholder his proportionate share of the assets of the said Alice Company. Thereafter stockholders owning stock in the said Alice Gold and Silver Mining Company to the number of 353,446 shares, which included the Butte Coalition Mining Company, as the owner of 234,215 shares of such Alice Company stock, availed themselves of this offer, and exchanged with said Amalgamated Copper Company 353,447 shares of the capital stock of the Alice Gold and Silver Mining Company for shares of stock of the said Anaconda Company, and the said Amalgamated Copper Company thus became and is now the owner and holder of 353,446 shares of the capital stock of the said Alice Gold and Silver Mining Company, and the same and the whole thereof was acquired by the said Amalgamated Copper Company in the manner and for the purposes above stated and for no other purpose.

Admits that prior to the 27th day of May, 1910, the directors of the said Alice Gold and Silver Mining Company caused to be called a meeting of the stockholders of the said Alice Gold and Silver Mining Company to be held at the City of Salt

Lake on the 27th day of May, 1910, for the purpose of considering and ratifying the action of the Board of Directors in adopting a resolution and contract providing for the transfer of all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the capital stock of the Anaconda Copper Mining Company. Denies that the said directors in calling such meeting or in anything in connection therewith acted under the direction of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or any of the officers thereof or any of the parties directing the business or operation of either of said companies; and denies that the said meeting was called or the notice thereof given pursuant to any purpose of said Amalgamated Copper Company or of any of the parties directing its affairs as set forth in said amended bill of complaint; but admits that said meeting was called in connection with the proposition theretofore made by the Anaconda Mining Company to the said Alice Gold and Silver Mining Company to purchase its properties for the said consideration aforesaid.

Admits that pursuant to the notice and call, a meeting of the stockholders of the said Alice Gold and Silver Mining Company was held at the office of said company in the City of Salt Lake on the 27th day of May, 1910. Denies that at such meeting there was represented stock to the number of

310,963 shares or any greater number than 295,100 shares of the total of 400,000 shares of the capital stock of the said Alice Gold and Silver Mining Company; and denies that 287,000 or any other number of the shares of said Alice Gold and Silver Mining Company represented at said meeting were owned by said Amalgamated Copper Company or the said Anaconda Copper Mining Company, or anyone representing them or either of them. Denies that all or any of the stock which was voted at the said meeting was voted by E. S. Ferry and one L. O. Evans, but admits that a great portion of said stock was voted by one E. S. Ferry and other persons representing the said stockholders as proxies; denies that the said E. S. Ferry was at said time or has at any time been an attorney or employee of the said Anaconda Copper Mining Company or the said Amalgamated Copper Company. Admits that 234,215 shares of the total of 295,100 shares of stock represented at said meeting were owned by the said Coalition Mining Company and were voted by proxies given by the persons in whose names the said stock stood upon the books of said Alice Gold and Silver Mining Company.

Amits and alleges that at the said stockholder's meeting, so called and held, a resolution was presented and adopted confirming and ratifying the previous action of the Board of Directors in authorizing and entering into a contract for the transfer of, and authorizing the transfer of, all of

the property of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of the stock of the said latter company, but denies that said resolution was presented by the said L. O. Evans or that the said L. O. Evans was present at said meeting.

Admits that the said resolution was carried at said meeting, but denies that the same was carried by a vote of 298,598 shares for, or 13,385 shares against the same, but alleges that the said resolution was carried by a vote of 289,590 shares for and 5,510 shares voting against the same. Admits that the said E. S. Ferry and certain other persons voted all of the shares for which they had proxies in favor of the said resolution and admits that all of the complainants who were presented or represented at the meeting voted against the same, but denies that the said L. O. Evans voted any shares at said meeting in any capacity whatsoever, and denies that any of the orators or complainants herein protested at said meeting against the resolution for the transfer of said properties except by such protest as was shown by the voting of those present or represented at said meeting against the said resolution, the said complainants so present or represented being as follows: Joseph S. Baer in person; J. R. Walker in person; Peter Geddes by J. R. Walker, his proxy. Denies that the said 30,000 shares of stock of the said Anaconda Copper Mining Company were not at the

time the said meeting was called or have not since been at any time worth more than \$1,020,000.00; and denies that the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or all or any of the parties concerned in the effort to procure the transfer of the said properties from the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, at all or any times, well or at all knew that the said 30,000 shares of stock were not at said time or have not since been worth more than \$1,020,000.00. And defendant alleges the fact to be that the said 30,000 shares of stock at and for sometime prior to said date were of the value of \$1,500,000.00, and at various times since said date have been worth and have had an actual market value of approximately the sum of \$1,500,000.00. Denies that the properties of the said defendant Alice Gold and Silver Mining Company have at all or any of said times been worth upwards of \$15,000,000.00 or upwards of any sum in excess of \$1,000,000.00; or that any of the said corporations or persons mentioned in said bill of complaint well or at all knew of any such value; and defendant alleges the facts to be that the complainants and all other shareholders and all of the directors of the said Alice Gold and Silver Mining Company had full knowledge and means of knowledge available to them as to the value of the properties of the said Alice Gold and Silver Mining Company, and that neither the Amalgamated

Copper Company nor the Anaconda Copper Mining Company, nor any of their officers or representatives, nor any of the defendants in this action, had any information or knowledge or source of information or knowledge regarding the properties of the Alice Gold and Silver Mining Company or their value, which was not possessed by the said Alice Gold and Silver Mining Company and its stockholders and officers, or which was not fully shown by the books, records and papers of the said Alice Gold and Silver Mining Company, all of which were at all times available to all of the stockholders, officers and representatives of said Alice Gold and Silver Mining Company, and that every reason for the purchase of the properties of the said Alice Gold and Silver Mining Company and the sale thereof by said latter company was communicated to and fully known by each and all of the stockholders and officers of the said Alice Gold and Silver Mining Company. Admits that acting under the authority of the said resolution so adopted at the stockholder's meeting, and its own action, the Board of Directors of the said Alice Gold and Silver Mining Company directed the officers of the said company to carry out the said resolution and to so transfer all of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company in exchange for 30,000 shares of stock of the said Anaconda Copper Mining Company, and denies that in so doing or in taking any other

acts any of the directors of the said Alice Gold and Silver Mining Company acted under the direction of the Amalgamated Copper Company or the said Anaconda Copper Mining Company or their or either of their officers or representatives. Admits that acting under the authority of the said resolutions of stockholder's meetings and of the said Board of Directors, on the 31st day of May, 1910, the defendant John D. Ryan, as the President of the said Alice Gold and Silver Mining Company, and J. W. Allen its Secretary, in the name of of the said Alice Gold and Silver Mining Company, executed a deed of all the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, which said deed was on the 24th day of June, 1910, recorded in the office of the County Clerk and Recorder of the County of Silver Bow, State of Montana, where said property is situated, and alleges that the said deed was so made, executed and delivered in pursuance of the authority in and direction to the said officers from the stockholders and Board of Directors of said Alice Company, and was so made, executed and delivered in consideration of the said Thirty Thousand shares of stock of the said Anaconda Copper Mining Company, which were at the time of such transfer duly delivered to the said Alice Gold and Silver Mining Company, which ever since has been and now is the owner and possessor thereof. Admits that the said John D. Ryan, who executed the said deed in behalf of the said Alice

Gold and Silver Mining Company as the President thereof is, and at the time of the execution thereof was also the President of the Amalgamated Copper Company and a member of the Board of Directors thereof, and is and was at the time of the execution of the said deed a member of the Board of Directors of the Anaconda Copper Mining Company, and was at said time with the other officers of the said Anaconda Copper Mining Company intrusted with the immediate direction of its affairs at and about the City of Butte; but denies that the Amalgamated Copper Company had at said time, or has had at any time since, any affairs or business at or about the City of Butte, excepting the voting of its stock at stockholder's meetings of the companies in which it is and was a stockholder.

Denies that the defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry, or any or either of them, are or is, or have or has, at any time, been the servant or servants, employe or employes of the said Amalgamated Copper Company or the said Anaconda Copper Mining Company or either of them or of anyone or more of the corporations controlled by the said Amalgamated Copper Company, and denies that the said defendants in any or all of the things done by them as set forth in said amended bill of complaint or otherwise acted under the direction or pursuant to any instruction received from the said Amalgamated Copper Company or any one acting in its behalf.

Admits that after the transfer of the properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, there were instituted proceedings in the District Court of the Third Judicial District of the State of Utah in and for Salt Lake County, asking a decree dissolving the said Alice Gold and Silver Mining Company, which proceedings are now pending and being resisted by certain of the complainants herein, but denies that the said proceedings were instituted or caused to be instituted by the said defendant Anaconda Copper Mining Company or the said Amalgamated Copper Company or any company or person whatsoever controlling or directing the affairs or both or either of the said companies, and alleges that the said proceedings were instituted in pursuance to resolutions duly adopted at stockholders and directors meetings of the said Alice Gold and Silver Mining Company, called and held pursuant to the laws of the State of Utah and the by-laws of said corporation, and alleges that it was the object and purpose of the stockholders and officers of said Alice Gold and Silver Mining Company who favored the sale of its property to the Anaconda Copper Mining Company as aforesaid, from the time that they first contemplated such sale, to submit to the shareholders and officers of said Alice Gold and Silver Mining Company a proposition to dissolve the said company by proceedings in conformity

with the laws of the state of Utah, in case the said properties should be so sold.

Admits that the United Metals Selling Company is a corporation organized in or about the year 1900 with a capital stock of \$5,000,000.00, for the purpose of doing a general brokerage and commission business in metals and particularly in the sale of copper, and that since the organization of the said United Metals Selling Company, it has acted as selling agent for certain of the producing companies, a majority or more of whose stock was held by the Amalgamated Copper Company, under arrangements entered into between it, the said United Metals Selling Company, and the said companies or corporations producing the said copper; and admits upon information and belief that the said United Metals Selling Company had become by the month of March, 1911, the largest copper broker in the world, and admits that the said United Metals Selling Company has acted as selling agent for all of the producing companies controlled by or in which the said Amalgamated Copper Company was or is a stockholder, and denies that during the year 1910, the said United Metals Selling Company marketed upwards of 500,000,000 pounds of copper or any other amount of copper in excess of 426,000,000 pounds.

Admits that on or about the month of March, 1911, the said Amalgamated Copper Company had become the owner of all of the stock of the said

United Metals Selling Company of which the said John D. Ryan has become the president, and admits that as such stockholder the said Amalgamated Copper Company controls the sale of the copper product of the mines of the said Anaconda Copper Mining Company, and has so done since the transfers hereinbefore set forth, but denies that the Amalgamated Copper Company controls any other mining companies or companies producing copper or other metals other than the said Anaconda Copper Mining Company, but denies that the said United Metals Selling Company, or the Amalgamated Copper Company through said United Metals Selling Company or otherwise controls or sells the product of most of the producing mines of the United States, but admits that said United Metals Selling Company sells and markets the copper produced by other mining companies and operators than the said Anaconda Copper Mining Company.

Denies that this defendant has any knowledge or information sufficient to form a belief as to whether this suit is not a collusive one to confer upon a court of the United States jurisdiction of a case of which it would not otherwise have cognizance.

Defendant further denies each and every allegation and each and every part thereof, in the said amended bill of complaint contained not hereinbefore fully and specifically admitted or denied.

WHEREFORE, this defendant having fully an-

swered, confessed, traversed, avoided or denied all the matters in said amended bill of complaint material to be answered according to his best knowledge and belief, humbly prays this Honorable Court to enter its judgment that this defendant be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained and for such further and other relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

JOHN D. RYAN,

By **C. F. KELLEY, L. O. EVANS,**

W. B. RODGERS and D. GAY STIVERS,

His Attorneys, and Counsel,

616 Hennessy Bldg., Butte, Montana.

Due and personal service of the foregoing answer, and receipt of a copy thereof is admitted and acknowledged this 7th day of March, 1913.

WALSH & NOLAN,

Solicitors and of Counsel for Complainants.

Filed March 7, 1913. Geo. W. Sproule, Clerk.

Thereafter, on July 2, 1915, an interlocutory Decree was duly entered herein, in the words and figures following, to-wit:

[Same title of Court and Cause.]

No. 1086. Decree.

The above entitled cause coming on to be heard before the court on the 18th day of June, 1914, upon the pleadings and proofs, the complainants appearing and being heard by their counsel, Thomas

J. Walsh, Esq., and the defendants Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan, by their counsel, L. O. Evans, Esq. and W. B. Rodgers, Esq. and the court having heard the arguments of the counsel, and having considered proofs thereafter submitted by them, and being fully advised, and having thereafter, on the first day of May, 1915, rendered and filed its decision and opinion herein, it is now, on this 2 day of July, 1915, by the court ORDERED, ADJUDGED AND DECREED, that this cause be set down for hearing before this court on the —, the 19th day of July, 1915, for the taking of such testimony as the parties may submit touching:

1. The amount of debts and obligations of the Alice Gold and Silver Mining Company assumed by the Anaconda Copper Mining Company as a part of the consideration of the transfer, with any interest thereon by it paid or payable and at the rate thereof, and interest upon said debts and obligations and interest paid, from date of payment and at the rate thereof.

2. An account of all reasonable and necessary expenditures made by the Anaconda Copper Mining Company upon and in connection with the properties transferred to it by the Alice Gold and Silver Mining Company, in the maintenance, repair, care and operation of said properties, including all payments of taxes and assessments legally levied thereon, and the amounts realized

by said Anaconda Copper Mining Company from said properties, and from all ores mined or extracted therefrom by it, or its lessees, or those acting under it, after deducting the reasonable cost and expense of such operation and mining.

3. The amount of dividends paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company upon the Anaconda Copper Mining Company's stock so received by the said Alice Gold and Silver Mining Company in consideration of the said transfer, with interest thereon received. And also inventory and sufficient description of all property transferred and that is subject to resale.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that upon the determination by the court upon such hearing, of the amount of the debts and obligations of the said Alice Gold and Silver Mining Company, assumed by the said Anaconda Copper Mining Company, with any such interest, and of the amounts, if any, due to the said Anaconda Copper Mining Company upon the accounting above provided for, and of the amount of dividends paid by the said Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company as aforesaid, with any such interest, these amounts, together with the sum of \$1,500,000.00 heretofore determined by the court to be the value of the Anaconda corporate stock transferred to the Alice Gold and Silver Mining Company by the Anaconda Copper Mining Com-

pany, as set forth in the pleadings herein, shall be taken as the total proceeds received by the said Alice Gold and Silver Mining Company for its properties so transferred, as consideration for the said transfer.

That John Lindsay, of Butte, an Attorney of this Court, who is hereby designated and appointed as Special Master for the purposes of carrying out this decree, shall cause a notice to be published in a newspaper published in the City of Butte, in one published in the City of New York, and one published in the City of Boston, at least once a week for a period of twelve weeks, to the effect that pursuant to the decree of this court, this day made, all of the property (describing it) owned by the Alice Gold and Silver Mining Company on the 27th day of May, 1910, will be sold at public sale, in one parcel on the steps of the Federal Building in the city of Butte, County of Silver Bow, State of Montana, for cash, on the terms herein, on a day to be named in the said notice, said day to be not less than 5 days nor more than 15 days after the last day of publication of said notice, and said notice to provide that no bid will be received or considered unless in an amount greater than the consideration for the transfer of said property as hereinbefore specified, as the same shall be found to be upon the hearing herein ordered, and said notice shall also provide that no bidder shall be permitted to bid for said property at said sale without first depositing with the said Special Master, by cer-

tified check upon some Montana bank, payable to the order of the Special Master countersigned by the Judge of this Court, a sum at least equal to ten per cent of the amount of consideration for the transfer of said Alice Gold and Silver Mining Company's properties, to be determined on the hearing, as above set forth, such deposit to be made as security for the faithful performance of the bid, and for the payment of all costs and damages which may be caused by a failure to fully carry out said bid, including the costs of a re-sale, and any deficit in the purchase price received at such sale; any party to this action may become a bidder at such sale. The said Special Master shall have the power to adjourn such sale from day to day, not exceeding in all a period of ten days.

If upon said sale any responsible bidder, who has made such deposit as aforesaid, shall offer for the said properties a sum greater than the amount of the consideration for such transfer, so to be determined upon such hearing, and if such bidder is ready to comply with the terms of his bid, and if confirmed by the court, the transfer of the said properties of the said Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company heretofore made, as set forth in the bill of complaint, on the 27th day of May, 1910, shall be annulled, cancelled and set aside, and the defendant Alice Gold and Silver Mining Company shall execute and deliver to the highest responsible bidder at such sale, upon a compliance with the

terms of his bid, a conveyance by grant deed of all of the said property, including all choses and rights of action in the said Alice Gold and Silver Mining Company; and if the said Alice Gold and Silver Mining Company shall fail for a period of sixty days to so execute and deliver said deed, if the execution and delivery of the same be not stayed by appeal, or by order of the court, then the said Special Master shall make, execute and deliver such conveyance for such property, for and on behalf of the said Alice Gold and Silver Mining Company; and upon the execution and delivery of such conveyance, the said defendant Anaconda Copper Mining Company is ordered and directed to forthwith deliver up the possession of all of said property to the said purchaser named in such conveyance; whereupon, the defendant Alice Gold and Silver Mining Company shall surrender to the defendant Anaconda Copper Mining Company the certificates of stock for thirty thousand shares of stock of the said Anaconda Copper Mining Company, received in consideration for such transfer, and pay to the Anaconda Copper Mining Company the amount of any dividends received upon such stock, with any interest received upon the moneys so paid as dividends, and also the amount, if any, found due from the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company upon the accounting hereinbefore provided for, or less the amount, if any, found due

from the Anaconda Copper Mining Company to the said Alice Gold and Silver Mining Company, upon the said accounting, if upon such accounting there shall be found to be due any sum from the said Anaconda Copper Mining Company; and the said Alice Gold and Silver Mining Company shall also pay to the said Anaconda Copper Mining Company the amount of the indebtedness assumed and paid by the said Anaconda Copper Mining Company, with any interest thereon paid by the said Anaconda Copper Mining Company, at the rate due and paid, and interest at like rate from and upon any payment by it made.

If, upon the sale to be made by the said Special Master, no responsible bidder who has complied with the terms aforesaid, shall offer for the said property a sum greater than the amount of consideration for the transfer of said property to the Anaconda Copper Mining Company, to be determined as hereinbefore provided, the said sale and transfer of the said property and assets of the said Alice Gold and Silver Mining Company, complained of in the complaint in this action, shall be affirmed and held to be in all respects valid, but in that event any of the complainants herein, and other stockholders of the Alice Gold and Silver Mining Company entitled to the benefit of this decree and who shall appear herein within sixty days from the date hereof and on notice to defendants prove their right thereto, and who within thirty days after said sale date surrender their

stock in the Alice Gold and Silver Mining Company as hereinafter provided, who may care to surrender the stock in the Alice Gold and Silver Mining Company owned by him or them, as hereinafter provided, and to receive in lieu thereof, in cash, his proportion of the purchase price paid by the Anaconda Copper Mining Company for said property, shall file notice of such election in writing herein within 60 days from the date hereof; and thereupon, and within 30 days after said sale date, the said Anaconda Copper Mining Company shall pay to the said Alice Gold and Silver Mining Company an amount of money equal to the proportionate shares of the said sum of \$1,500,000.00, the value of said Anaconda Copper Mining Company's stock, as proportionately belongs to the stockholders so electing to surrender their stock (that is to say, such proportionate part of said \$1,500,000.00 as the stock owned by such stockholders so electing to surrender, bears to the entire amount of stock of the said Alice Gold and Silver Mining Company, viz: 400,000 shares). Whereupon, the said Alice Gold and Silver Mining Company shall duly endorse and deliver up to the said Anaconda Copper Mining Company certificates for such part of the said thirty thousand shares of stock of the said Anaconda Copper Mining Company, as the amount of such Alice Gold and Silver Mining Company's stock, so surrendered by its stockholders so electing bears to the entire capital stock of the said Alice Gold and Silver Mining

Company; and the moneys so paid by the defendant Anaconda Copper Mining Company to the defendant Alice Gold and Silver Mining Company, together with a like proportion of the dividends and interest thereon received by said Alice Gold and Silver Mining Company upon the 30,000 shares of said Anaconda Copper Mining Company stock, shall be by said Alice Gold and Silver Mining Company paid to the said stockholders so electing to surrender their Alice Gold and Silver Mining Company stock, upon their duly endorsing and delivering the certificates for such stock to the said Alice Gold and Silver Mining Company, the said moneys to be paid to said Alice Gold and Silver Mining Company's stockholders so surrendering their stock, according to their proportionate shares of the total capital stock of said Alice Gold and Silver Mining Company; and upon such payment to said Alice Gold and Silver Mining Company's stockholders, the stock so surrendered shall be adjudged to have received its proportionate and distributive share of the capital of said Alice Gold and Silver Mining Company.

The Special Master shall promptly report his proceedings and results of the sale to the court, and any sale made shall be subject to confirmation by the court, the purchaser to pay the balance due upon said sale to the Special Master within 30 days after any such confirmation.

In the event of a sale of the properties of the said Alice Gold and Silver Mining Company by the

Special Master, above provided for, and the execution and delivery of a deed to the said purchaser, the said Master shall pay over the proceeds of said sale, less the cost of such sale, including the compensation of such Special Master, hereafter to be fixed, to the said Alice Gold and Silver Mining Company.

In the event that there shall be no sale by the said Special Master, and the transfer and sale to the Anaconda Copper Mining Company, heretofore made, shall be affirmed, the costs of such sale, including the compensation of the said Special Master, and all other costs and expenses and allowances in this action shall be paid by the party and in the manner hereafter to be determined by the order of this court. So likewise, if a sale be made.

Done in open court this 2 day of July A. D. 1915.

GEO. M. BOURQUIN,

Judge.

Filed and entered July 2, 1915. Geo. W. Sproule,
Clerk.

Thereafter, on February 4th, 1916, a Final Decree was duly entered herein, in the words and figures following, to-wit:

[*Same title of Court and Cause.*]

NO. 1086. IN EQUITY.

Final Decree.

This cause came regularly on for further and

final hearing before the court on the 31 day of January, A. D. 1916, upon the report of the Special Master, showing his acts and doings in pursuance of his appointment as Special Master by the interlocutory decree of this court, made and entered on the 2nd day of July, A. D. 1915.

And it appearing to the court from the report of said Special Master, so filed as aforesaid, that on the 17th day of August, 1915, and until and including the 2nd day of November, 1915, said Special Master caused to be published weekly, once each week, for twelve consecutive weeks, in the Wall Street Journal, a newspaper of general circulation, printed and published in the City of New York, State of New York; also in the Boston News Bureau, a newspaper of general circulation, printed and published in the City of Boston, State of Massachusetts, and also in the Butte Daily Post, a newspaper of general circulation, printed and published in the City of Butte, State of Montana (making twelve weekly consecutive publications in each of said newspapers in all), that being the period prescribed under said interlocutory decree, a notice of sale of all property of the Alice Gold and Silver Mining Company, described in and covered by said interlocutory decree, and that said notice of sale in all respects conformed to the order of this court and to said interlocutory decree;

And it further appearing that at the time and place designated in said notice of sale, that is to say, on the 10th day of November, 1915, at the

hour of 10 o'clock A. M. of said day, on the steps of the Federal Building, in the City of Butte, County of Silver Bow, State of Montana, said Special Master, after having read the aforesaid interlocutory decree of the court and the notice of sale at length, did then and there publicly cry the sale of said described property, in the presence of all persons then and there assembled, and that at said time and place no person or persons appeared to bid therefor, and that no one offered to make a bid in any sum or amount whatsoever therefor, and that no bids for said property, or any part or portion thereof, having been made at said time and place by any person or persons, the said Special Master then and there declared the facts as herein stated, and has made full return of his said proceedings under said interlocutory decree, from which report and return it appears to the court that said proceedings were had in strict conformity with said interlocutory decree, and were in all respects regular, and that at the sale of said property, so ordered by said interlocutory decree, there was no bid or bidders for the said property, and no person whomsoever bid a sum in excess of the consideration as the same has heretofore been found paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company for the same, and said report and the said proceedings of the said Special Master are hereby confirmed.

NOW, THEREFORE, the court, being fully advised in the premises, and upon the whole case,

and in pursuance of the terms and provisions of said interlocutory decree, does hereby

ORDER, ADJUDGE AND DECREE, that the said sale and transfer of the mining ground and premises, and all the property of every nature whatsoever, of the said Alice Gold and Silver Mining Company, to the said Anaconda Copper Mining Company, had on or about the 27th day of May, 1910, the same being the sale and transfer complained of in complainants' bill of complaint, be, and the same is hereby, affirmed and decreed to be in all respects valid and binding, and the title thereto, now held by the said Anaconda Copper Mining Company, is adjudged and decreed to be a good and valid title.

AND IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that complainants do have and recover of and from the said defendants all their costs incurred in this suit, together with interest at the rate of eight per cent per annum from the date of this decree until paid.

DONE in open Court this 4th day of February, A. D. 1916.

GEO. M. BOURQUIN,

Judge.

Filed and entered Feb. 4, 1916. Geo. W. Sproule, Clerk.

WHEREUPON, said pleadings, process and decrees are entered of final record herein, in accordance with the law and practice of this court.

Witness my hand and the seal of said court at

Helena, Montana, this 4th day of February, A. D. 1916.

[Court Seal] GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

[Endorsed] Final Record. Filed and Entered
Feb. 4th, 1916.

GEO. W. SPROULE, Clerk.

By C. R. GARLOW, Deputy Clerk.

[Same Title of Court and Cause.]

Motion for Temporary Restraining Order and Injunction.

Affidavit.

United States of America,
District and State of Montana,
County of Lewis and Clark, ss.

T. J. WALSH being duly sworn says he is one of the solicitors for the complainants in the above entitled cause and as such verified the bill of complaint herein. That the source of the information of affiant in relation to the matters set forth in the bill of complaint are as follows:

As to the corporate capacity and date of organization of the Alice Gold & Silver Mining Company, lines 11 to 13 inclusive, page 2, affiant has before him a certified copy of the articles of incorporation of the said Alice Gold and Silver Mining Company. As to the corporate capacity and powers of the Anaconda Copper Mining Company, line 13, page 2 to line 12, page 5, affiant has before him an abstract to property situated in the city of Butte,

title to which passed through the said Anaconda Copper Mining Company, and in which is set forth a copy of the articles of incorporation of the said Anaconda Copper Mining Company setting forth the powers of the said corporation as in the bill set out.

As to the stockholdings of the complainants, lines 12 to 24, inclusive, page 5, the complainant Joseph S. Baer, who represented all of the complainants, gave to affiant, and affiant has before him, a copy of the proceedings of the meeting of the stockholders of the Alice Gold and Silver Mining Company, referred to in the bill of complaint, held on the 8th day of May, 1911, from which it appears that at said meeting the complainant Joseph R. Walker voted as the owner of 2110 shares; the complainant Peter Geddes, by J. R. Walker, proxy, 3110 shares; the complainant Eugene Blum, by W. J. Barrette, proxy, 400 shares; the complainant Isaac Blum, by W. J. Barrette, proxy, 1600 shares; the complainant Edward Blum, by W. J. Barrette, proxy, 1175 shares; the complainant Isador Baer, by W. J. Barrette, proxy, 200 shares; the complainant Joseph S. Baer, by W. J. Barrette, proxy, 500 shares; the complainant Alphons Dreyfoos, by W. J. Barrette, proxy, 600 shares; the complainants Dreyfoos, Blum & Company, by W. J. Barrette, proxy, 400 shares; the complainants Kurzman & Frankenheimer by W. J. Barrette, proxy, 200 shares; the complainants H. S. Everett, by W. J. Barrette, proxy, 700 shares;

Margaret Ann Meehan, by W. J. Barrette, proxy, 1050 shares.

As to the holdings of the Alice Gold and Silver Mining Company, line 25, page 5, to line 6, page 6, inclusive, affiant has before him a copy of the deed referred to in the bill of complaint taken from the records of Silver Bow County, Montana, in which is set forth the property conveyed. Affiant has personal knowledge of the location of the properties conveyed, and as to value, his information comes from statements made to him by the complainant Baer and other stockholders of the Alice Company.

As to the averments of the bill of complaint from line 7, page 6, to line 20, page 7, the facts therein set forth are matters of common knowledge and a part of the general history of the State of Montana, of which affiant has special knowledge by reason of participation in litigation involving many of the companies therein referred to.

As to the averments of the bill, lines 22 to 32 inclusive, page 7, the same are matters of general history and common notoriety in this connection reference is made to the "Copper Hand Book," Volume X, as follows: "The Amalgamated Copper Company was organized 1899 with the intention of controlling the copper industry of the world." The Copper Hand Book is a book issued annually as "a manual of the copper industry of the world," giving succinctly information concerning the organization and business of

all corporations engaged in the production or sale of copper. The work is found in public libraries generally and in the offices of most brokers dealing in mining stocks, and is generally referred to by parties investing or desiring to invest in such stock for information touching the business and affairs of companies of the character mentioned.

As to the averments found in the bill in relation to the powers of the Amalgamated Copper Company, line 32, page 7 to line 20, page 8, affiant's information comes from the report of the case of *McGinness v. Boston & Montana Consolidated Copper & Silver Mining Company*, 29 Montana, 428-448, and from the same source the averments from line 27, page 8 to line 13, page 9.

Of the averments from line 14, page 9, to line 2, page 10, affiant has personal knowledge except in relation to the relationship between the parties organizing the Red Metal Mining Company and the Amalgamated Copper Company, concerning which the averment is a matter of general history and common notoriety.

As to the price paid for the Heinze properties, lines 3 to 5 inclusive, page 13, affiant heard the sworn testimony of the said Heinze, who asserted that the amount paid was in fact some considerations in addition to \$10,500,00 in cash.

As to the averments of lines 5 to 8 inclusive page 10, the same is a matter of deduction from the facts set forth in the bill of complaint, as well as a matter of general history.

As to the averments of lines 9 to 23 inclusive, page 10, affiant's information comes from the Copper Hand Book and other similar publications.

The averments of the bill from lines 23 to 26 inclusive, page 10, are matters of deduction.

As to the averments of the bill from line 27, page 10 to line 11, page 12, the purposes actuating the proceedings therein set forth are matters of deduction.

The facts in relation to the transfer of the Clark properties to the Anaconda Copper Mining Company are matters of general history, as are likewise the other averments thereof. The transfers therein mentioned have generally been recorded and mention of the proceedings made in the public prints. In a circular letter issued by the defendant board of directors of the Alice Gold and Silver Mining Company it is recited as follows:

"Recently the stockholders of other companies, to-wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all of the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company, for certain amounts of the capital stock of the Anaconda Copper Mining Company,

and the last named Company in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company."

As to the averments from line 12, page 12 to line 8, page 13, the purposes of the acts narrated are matters of inference.

The facts in relation to the acquisition by the Amalgamated Copper Company of a majority of the stock of the Alice Gold and Silver Mining Company or the Anaconda Copper Mining Company, or both, are derived from the Copper Hand Book and another publication in common use in the same way as the Copper Hand Book, known as Stevens' Manual. Also the copy of the proceedings of the stockholders' meeting of the Alice Gold and Silver Mining Company shows practically all of the stock save 200 shares voting in favor of the resolution of sale to have been voted by E. S. Ferry and L. O. Evans, proxies, and affiant knows the said L. O. Evans to have been since long prior to the date of the said meeting one of the attorneys of the Anaconda Copper Mining Company. Likewise affiant has before him a circular letter issued by the board of directors of the Alice Gold and Silver Mining Company, made defendants herein, under date of April 27, 1910, in which it is recited that in 1906 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock

of the Alice Gold and Silver Mining Company. The Butte Coalition Company is a holding company owning all of the stock of the Red Metal Mining Company, the John D. Ryan mentioned in the bill of complaint being the vice-president, and J. W. Allen, another director of the Alice Gold and Silver Mining Company, being the secretary thereof, and the said company owning all of the stock of the Red Metal Mining Company, whose property, as herein set forth, was, together with the properties of the other companies operating in the city of Butte and referred to in the bill of complaint transferred at or about the same time to the Anaconda Copper Mining Company in exchange for stock of the Anaconda Copper Mining Company.

As to the averments of the bill from line 10, page 13, to line 25, page 14, the purposes as therein set forth are matters of deduction. As to the facts recited ~~affiant's~~^{affiant's} information comes from the circular letter calling the said meeting and from the copy of the minutes of the proceedings had thereat as hereinbefore set forth.

As to the averments of the bill from line 25, page 14, to line 4, page 15, affiant's information comes from statements made to him by the complainant Baer and other stockholders of the Alice Gold and Silver Mining Company.

As to the averments of the bill, lines 5 to 23 inclusive, page 15, affiant has before him a copy of the deed from the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, hereinbefore referred to.

As to the averments of the bill, lines 23 to 32, page 15, the averments are matters of general history and common notoriety as facts set forth in the reference works above mentioned. As to the averments of lines 1 to 5 inclusive, page 16, affiant has personal knowledge as to the averments of the relationship of the personal defendants other than the defendant Ryan, and affiant speaks upon general rumor and understanding as to the defendants Thornton and Allen, whom he finds, by reference to the manuals above referred to, are directors of the Red Metal Mining Company. As to the defendant E. S. Ferry, affiant speaks on information conveyed to him by complainants and upon the reasonable deduction to be drawn from the proxies voted by Ferry and Evans jointly at the meeting of the stockholders of the Alice Company referred to.

The averments of lines 6 to 8 inclusive, page 16, are matters of deduction.

As to the averments of lines 9 to 17, inclusive, page 16, affiant has been provided with a copy of the papers filed in the said proceedings by the attorneys for the complainants in the State of Utah.

As to the averments of the bill from line 18, page 16 to line 10, page 17, the information of affiant comes from the manuals above referred to.

As to the averments of the bill from lines 11 to 13 inclusive, page 17, the same is within the personal knowledge of affiant.

And further affiant sayeth not.

T. J. WALSH.

Subscribed and sworn to before me this 14th day of November, 1911.

J. R. WINE, JR.,

[Seal] Notary Public for the State of Montana, residing at Helena.

My commission expires Nov. 13, 1914.

Filed Nov. 14, 1911. Geo. W. Sproule, Clerk.

Praecipe showing no service upon Defendants J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry.

[Note: It appears from Marshal's return at page 32 of this record that no service was made upon defendants named. No praecipe is on file giving this information.]

[Same Title of Court and Cause.]

Injunction.

The above entitled cause coming on to be heard, before the above entitled court, at Helena, Montana, on Wednesday, the 3rd day of January, A. D. 1912, the complainant appearing by its Solicitor, T. J. Walsh, Esq., and the defendants by their solicitor, C. F. Kelley, Esq., on the order to show cause herein why the defendants and each of them should not be enjoined and restrained, during the pendency of the above entitled suit, and until the further order of the court in the premises, from selling or otherwise disposing of any of the shares of the capital stock of the Anaconda Copper Mining Company received by the defendant, the Alice Gold and Silver Mining company from the said Anaconda Copper Mining Company in exchange for the property of the said Alice Gold and Silver

Mining Company, to-wit thirty-thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company, and the parties having submitted their proof, and the court having heard the argument of counsel, and it appearing to the court that this is a proper case for an injunction, and that sufficient grounds exist therefor.

IT IS THEREFORE ORDERED that pending the final determination of this suit, and until the further order of the court, or the judge thereof, the defendants, the said Alice Gold and Silver Mining Company, John D. Ryan, W. D. Thornton, J. W. Allen, A. C. Carson and E. S. Ferry, and each of them, and their officers, agents and representatives, and each of them, be and they hereby are, commanded and enjoined to refrain from selling, transferring or otherwise disposing of the hereinbefore mentioned shares of the capital stock of the Anaconda Copper Mining Company, now held by the said Alice Gold and Silver Mining Company.

This order to become effective upon the complainants' filing with the clerk of the said court, a bond in the sum of Five Thousand (5000) Dollars, with conditions that complainants will pay all cost and damages which defendants may suffer, by reason of the said injunction order, if it shall finally be determined that they were not entitled thereto.

Dated this 9th day of July, A. D. 1912.

GEO. M. BOURQUIN, Judge.

Filed July 9, 1912. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Memorandum Order.

Hunt, J.

Peter Geddes et als., who are minority shareholders in the Alice Gold and Silver Mining Company, incorporated under the laws of Utah, and doing business at Butte, pray the court to annul a deed of all the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, a corporation also doing business at Butte. The consideration for the transfer of the property of the Alice Company to the Anaconda Company is thirty thousand shares of the capital stock of the Anaconda Company, worth about \$1,300,000. The application for immediate consideration is that an injunction issue restraining the Anaconda Copper Mining Company from transferring the stock in question pending the litigation, to the end that if the facts upon final hearing should warrant the court in granting the relief prayed for, the stock received by the Alice Company as a consideration for its property may be restored to the Anaconda Copper Mining Company. Defendants resisted the application, and hearing was had.

Among the grounds relied upon by the complainants for a restraining order is this: That the sale is void because there is a substantial identity between the parties who negotiated and carried

out the sale and the parties who negotiated and carried out the purchase. The contention, stated in the briefest way, is that the defendant, the Anaconda Copper Mining Company, and the Alice Gold and Silver Mining Company, in which latter corporation complainants are shareholders, are both in practical effect directed or controlled by Mr. John D. Ryan, who it is proven was, at the time of the transaction involved herein, a director in both of said corporations and held the position of president of the Alice Gold and Silver Mining Company. The Alice Company was incorporated in 1881 with four hundred thousand shares of par value of twenty-five dollars for each share. At the time that the Alice Mining Company sold its property to the Anaconda Company, the majority of the stock of the Alice Company was owned by the Butte Coalition Company, a stockholding corporation holding stock in mining corporations in Butte. In this corporation also Mr. Ryan was a director at the time of the sale of the property of the Alice Company to the Anaconda Company. Furthermore, it appears that the Amalgamated Copper Company, also a stockholding corporation owns a majority of the Anaconda Copper Mining Company's stock, and about one-twentieth of the capital stock of the Butte Coalition Company, and that in the Amalgamated Copper Company Mr. Ryan was and is a director and vice president.

The Butte Coalition Company referred to was organized about 1906 to hold the majority of the

stock of the Alice Mining Company, heretofore referred to, and all of the stock of the Red Metals Mining Company. The Red Metals Mining Company was also organized about 1906, and became the owner of certain valuable copper mining properties in and about Butte which had for a long time theretofore been the subject of bitterly contested litigation between mining interests commonly regarded as belonging to or controlled by the Amalgamated Copper Company and those commonly known as belonging to or controlled by Mr. F. A. Heinze. Settlement of all the differences between the litigants in these contests was had about 1906, and transfer of title was made to the Red Metals Mining Company, and thereafter the Butte Coalition Company became the owner of the stock of the said Red Metals Company. It appears that certain of the stockholders of the Alice Mining Company, who sent proxies to vote at the meeting held at Salt Lake in May, 1910, to consider the transfer of the property of the Alice Company to the Anaconda Company, designated as one of their attorneys one of the counsel who had been and was then one of the counsel of the Anaconda Copper Mining Company. Again, the same counsel who acted for the Anaconda Copper Mining Company acted for the Red Metals Mining Company in harmonizing the relationships of the properties of the Red Metals Mining Company toward the properties of the Anaconda Copper Mining Company when the Amalgamated-Heinze liti-

gation ended in 1906. It also appears that Mr. John Gillie, general superintendent of mines of the Anaconda Copper Mining Company, has for some years been connected with the Alice Company, such connection having its origin in some agreement had by Mr. Gillie with Mr. Ryan, though no compensation was ever paid to Mr. Gillie by the Alice Mining Company. Mr. Gillie appears too to have acted in an advisory capacity to the Red Metals Mining Company.

The Alice properties, consisting of many quartz claims which are on the hill north of Butte, appear to be low grade, below the 1000 foot level. The Alice claims are situated just west from and contiguous to certain of the properties of the Anaconda Company. The main shaft is nearly 1500 feet deep. About 1893, the mines were flooded up to the 1000 foot level. The water was kept at that level until 1899, when a mill then upon one of the claims was closed down, and the water rose to the 200 foot level. Within the Alice properties there are veins,—some large, others smaller, with zinc and some lead, with apparently a large body of ore, much of which is refractory zinc. For years prior to the sale of the Alice property to the Anaconda Company, the Alice Company's interests were in charge of Mr. Buzzo. When advice was necessary with respect to mining matters, he consulted with Mr. Gillie, of the Anaconda Company, and when legal matters arose, he consulted with a gentleman who was also one of the

counsel of the Anaconda Copper Mining Company. There were some leases made upon the Alice property upon which certain royalty payments were made, which payments were deposited to the credit of the Alice Company, up to the time when the Anaconda Company took over the property. The receipts of the Alice Company were not sufficient however to take care of the expenditures. When the transfer was made to the Anaconda Company, the Alice Company was indebted to the Butte Coalition Company in about \$34,000. It can not be said that the Alice Mining Company was insolvent, though it appears to have been a losing corporation. However, no effect, other than the sale under investigation, appears to have been made to sell the property or to finance the company so that it could operate, or to dismiss the debt of \$34,000 due to the Butte Coalition Company, nor is there anything to show that the Butte Coalition Company was seeking to collect the debt. The property seems purposely to have been kept idle for years past. Nor does it appear that efforts to exploit the property were recently made. Surely a property which sold for the equivalent of \$1,300,000 would have had little or no difficulty in raising \$34,000 due to another corporation. While the Alice paid dividends in years gone by, since 1898 it has paid none. There is evidence tending to show that the main lode, which runs easterly through the Alice properties, is the Rainbow,—a large lode which runs north-

east and southeast. At the time that the Alice Company voted to transfer its property to the Anaconda, it was not properly equipped for any mining necessities, and doubtless before any extensive equipment should be put upon the Alice, exploration work would have to be done. For some years before the Butte Coalition Mining Company acquired the stock of the Alice Company, the stock of the Alice was depressed to a very low point, at one time even to twelve cents a share; but in 1906 and 1907 stock sold for five, six, and seven dollars a share. The operations of the company ceased about 1899. The Alice, which had yielded gold and silver, was not then regarded as a copper producer, but the general history of the Butte camp is that it is not until deep mining is carried on that copper ores become the principal product of the mines. That the Alice property is of great value is to be inferred from the value of stock agreed to be paid as fair by the Anaconda Company. That Mr. Ryan, managing director of the Anaconda Company, must have had some specific detailed knowledge of ore bodies in the Alice, their extent, character and value, which would warrant the payment of \$1,300,000 for the property, is an irresistible inference. We all know that the science of mining has been so far advanced within the last fifteen years that it enables engineers to express clear and definite opinion of mine values. Mere chances have given way to highly reasonable expectations based

upon exploitation, study of geological conditions, assays, mineralogy and improved commercial facilities for reducing ores.

In its practical effect, the proposition under investigation involves what may be called the absorption of the Alice Mining Company by the Anaconda Company. We must not confuse the proposition with that of a possible agreement to purchase the entire possible output of the Alice Company; that is to say, we must bear in mind that the proposed transaction here is not that of taking the possible product to mine which the Alice Company was organized, but to take all the property itself, and to leave the Alice Company only a stockholding corporation.

I do not think the evidence justifies a conclusion that at the time that the circular letter of April 27, 1910, to the stockholders of the Alice Company was issued, the object in view was to dissolve the Alice Company, inasmuch as the circular letter itself not only is wholly silent concerning dissolution, but expressly states the purpose of the meeting to be to submit to the consideration of the stockholders and to have them pass upon the proposed contract of sale between the Alice Company and the Anaconda Company, which proposition, if approved, would result in the sale and transfer of all of the property and securities of the Alice Company to the Anaconda Company, in consideration of the issuance and payment by the

Anaconda Company of thirty thousand shares of its capital stock.

Assuming that such a transfer would be valid, though approved by less than the unanimous consent of the stockholders, I can not think that this may be done against the objections of minority stockholders, unless it has been made to appear that such change is for the best interests of the Alice Company and its shareholders. Here, for instance, it is charged that the proposed transfer is for a consideration which is inadequate, in that the mines of the Alice Company are worth many times more than \$1,300,000, the value represented by the stock in the Anaconda Company which it is proposed to turn over to the stockholders of the Alice Company. Of course, it may be that upon the trial these averments of inadequacy of consideration will be held for naught. But suppose they are true, would not a court of equity prevent the consummation of the contract of sale? It seems clear that considering all the interrelated associations of the corporations heretofore referred to and of the directorships of Mr. Ryan in the several companies, minority shareholders have a right to call upon the courts to require the purchasing company through those of its directors who were also interested in the selling company, to disclose everything which they knew concerning the value of the Alice, the sources of such knowledge, the reasons for the sale, and the fairness thereof. Thus it devolves upon Mr. Ryan

to show that all knowledge which as a director of the Anaconda he obtained concerning the Alice properties was given to the directors and shareholders of the Alice Company.

Upon principle, contracts between corporations having a common director should be regarded very much as are contracts between individual directors and their corporations. Such contracts are not prohibited; nor are they *prima facie* void or fraudulent, but they are voidable, and it is a safe rule of conduct which imposes upon those who would sustain them the duty of showing clearly and satisfactorily that they are entirely fair and free from wrong. In the light of the complexities which have come to surround corporate transactions whereby interlocking directorates are frequently acting for corporations dealing with each other opposing interests are often involved. For example, plainly it is to the interests of the corporation which sells its property to receive as large a consideration as properly possible for it. Equally clear is it that it is to the interests of the buying corporation to buy for as small a price as it properly can. But if we have one director who is managing director acting for the selling concern who at the same time represents the buying concern, and who is a managing director in it, necessarily we have an apparent conflict of interests, a conflict that upon complaint by minority shareholders the law may become

concerned with and will inquire into with exceeding circumspection.

The books are not harmonious in their discussion of the better view to take of a transaction such as the evidence discloses the one under examination was. But after reading the many cases cited and others referred to by text-writers, we can safely approve of the doctrine stated by Thompson that such contracts while not void are voidable. He says:

"Contracts between corporations having a common directory are regarded by the courts very much with the same suspicion as contracts between individual directors and their corporations. Some courts have gone to the extent of holding that such contracts are *prima facie* fraudulent and void. But the more general as well as the ^{more} reasonable rule is that such contracts are not void but voidable. And the fairness of such contracts must be shown by clear and convincing proof and it must be made to appear that they are absolutely free from fraud. Contracts between corporations having a common directorate are voidable, although there was a quorum in each board of directors who were not directors in the other. The contracts of directors of two corporations are not void but voidable only." II Thompson on Corporations, Sec. 1242.

The same author also writes as follows, Sec. 1243:

"Contracts of consolidation, lease or sale are fre-

quently entered into between corporations where the directors of the one are largely interested in the stock of the other; or where one corporation owns a majority of the stock of the other contracting corporation; or where the stockholders of the two corporations are practically the same. Such contracts are governed by the same rules, substantially, as those where directors deal with themselves, or with the corporation. They are not necessarily void, but if there is actual fraud or if any undue advantage is taken, or the contract is unfair, the courts will give relief at the instance of the injured party. Thus, where a majority of the directors were interested in a contract adversely to the stockholders of the other contracting corporation, the contract was held illegal, and the fact that the directors made the contract openly did not validate it. So, minority stockholders may have a lease canceled which is made by officers and owners of a majority of the stock to another corporation."

My conclusion is that the burden is cast upon the defendants to satisfy the court by evidence from those who were in the best position to know all the facts and circumstances, that the whole transaction was fair and absolutely free from oppression or wrong. And clearly, until trial of the main action is had, it is just to all concerned that the stock should not be transferred by the Anaconda Company to the Alice Company.

Questions raised by complainants and not here

in discussed are reserved until the facts have been adduced upon trial.

Complainants' motion to file their amended bill is hereby granted.

Injunction pending litigation will issue, upon complainants' filing a bond in the sum of five thousand dollars, with conditions that complainants will pay all costs and damages which defendants may suffer by reason of injunction order if it shall finally be determined that they were not entitled thereto.

Filed June 29, 1912. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for complainants and counsel for answering defendants, in the above entitled action, that all original maps introduced in evidence as exhibits and used in connection with the testimony of any witness in the above entitled action may be sent to, and filed with, the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and certified to said court in the original form in accordance with the rules of said court and be treated as original exhibits in said court; and without the necessity of printing the same in the transcript on the appeal of said action.

WALSH & NOLAN,
Solicitors for Complainants.

L. O. EVANS, W. B. RODGERS, D. GAY STIVERS,

Solicitors for Answering Defendants.

Filed Jan. 10, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***Order.**

On motion of counsel for complainants, and pursuant to stipulation this day filed herein;

IT IS ORDERED, That all original maps introduced in evidence as exhibits and used in connection with the testimony of any witness in the above entitled action, be sent to and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to be used as original exhibits in said court in connection with the statement of the testimony in said case and without the necessity of printing said exhibits in the transcript on the appeal in said action.

Dated this 10 day of January, 1916.

, BOURQUIN,

Judge.

Filed Jan. 10, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***[Decision.]**

This is a suit by minority stockholders of the Alice Company to avoid an executed sale of all Alice property to the Anaconda Company (defendant corporations) for stock of ~~both of~~ the latter.

It will suffice to say the grounds alleged are

that the Anaconda is of a copper combine in unreasonable restraint of interstate trade, and that to serve its purposes therein it secured control of Alice and against plaintiffs' dissent accomplished said sale for an improper and inadequate consideration. The answer is of denials and justification sufficiently hereinafter appearing. Disposition of said stock was enjoined pending suit. (197 Fed. 860.)

The court refrains from determining the issue involving the Sherman anti-trust act, because unnecessary in that all the relief warranted is otherwise awarded.

Furthermore, in ^{*Holder*} ~~Silver~~ versus Refining Co. decided by the supreme court, Feb. 23, 1915, it is emphasized that for familiar reasons the act is not available, in attack at least, save as in it provided, viz, that at the suit of the government to dissolve and enjoin and punish conduct by it made unlawful, and at the suit of private parties injured by its violation to recover, the treble damages it awards. This general language is beyond the necessities of the decision and will not conclude the court in a case like this at bar.

Shawnee Compress company versus Anderson, 209 U. S. 423, indicates that in a proper case minority stockholders may enjoin and undo corporate acts *ultra vires*, because of violation of the Sherman act. For though said case involved a contract not fully executed and though the basis of the decision is somewhat vague, it must rest upon the

Sherman act to whatever extent interstate commerce was involved in that in respect thereto the said act monopolizes the field. And see *Boyd versus Ry. Co.*, 220 Fed. 180.

Coming direct to the issues upon which this decision is based the court finds that the price paid for the Alice property was substantially inadequate, and because thereof, of the methods of sale, of the nature of the consideration and its intended disposition, and of the dissent of Alice minority stockholders (plaintiffs), the court concludes that plaintiffs are entitled to relief.

At the time of sale Alice was dormant. Its long-time specific operations for silver had finally failed, and it was in debt; its plant destroyed; its mines closed and flooded; an expense and unprofitable for some 17 years next prior to the sale. Alice was ripe for dissolution and distribution of its assets to stockholders. Although it had large bodies of unworkable zinc-silver ores and much virgin ground, under such circumstances no rule of law obligates a corporation to borrow, if possible, necessarily large sums of money to pay debts and expenses or to enable it to rehabilitate its mines and experiment and explore, however desirous minority stockholders might be to assume the risk. For that is a matter of judgment in which the majority controls. By reason of the circumstances there was common-law power, co-extensive with any possibly given by statutes or articles without unanimous consent

to sell all Alice property. This property consisted of about 140 acres of fairly compact mining ground, embracing three-quarters of a mile of the Rainbow, the great lode that first made Butte famous for silver. Its many claims contained other lodes and unexplored territory. Its known silver ores were exhausted, but it has large bodies of zinc-silver ores, the discovery of a process to reduce which was not hopeless at the time of sale nor now.

Though the Rainbow lode is without the copper section of the Butte district and is not known to contain copper ores of value, from a trace to above 1 per cent. of copper had been found in some indefinite places and extent in Alice.

Defendants' experts testify that in Alice copper is a remote possibility; plaintiffs' that it is a geological probability. The former are of opinion the price paid for Alice, 30,000 shares of Anaconda of a market value of \$1,500,000 and assumption and payment of all Alice obligations and debts indefinite in amount, was fair and liberal to Alice; the latter, that Alice was worth at least \$3,000,000, and one of them, Walter Harvey Weed, declares he would have advised against sale because of "unearned increment" from development and discoveries tending in Alice's direction, and that, at \$5,000,000 to bring to the producing stage Alice "is a very good gamble." Jno. D. Ryan testifies the price for Alice was arbitrarily fixed, "it had to be, it could not be otherwise," and Weed

inclines to the view that mining values are arbitrary. Ryan further testifies that "on a gamble" in 1906, having purchased control of Alice at the rate of \$600,000 for the whole, from the standpoint of Alice, he believes the sale to Anaconda for \$1,500,000 was a "very good trade and a very good profit;" and that since Anaconda's resources and not too-distant workings would enable it to more cheaply explore Alice at depth in the speculative hope of finding something, from the standpoint of Anaconda it was a justifiable purchase and Anaconda" could well afford to take the gamble involved." (Of course, when Ryan bought control of Alice its quotations immediately rose.)

It would serve little to detail the facts, circumstances and reasoning by which the parties arrived at their widely-different conclusions, for the fact remains that upon the gamble, inspired by possibilities or probabilities, hopes or expectations, Anaconda paid for Alice an arbitrary price of \$1,500,000 plus. If there is any reason to believe this was the limit, that an open field would not have produced a purchaser more optimistic and less conservative than Anaconda and who would have paid more, it is not apparent.

It is clear there is no market value for such properties. Their price is arbitrary. It is not alone the value in sight, but also all that hopes of valuable discoveries or ability to resell to the speculative public will inspire some one to pay; and this often involves more in the nature of the personal

equation than accurate knowledge or scientific attainment. Anaconda paid a large price, but, in view of the extent and history of Alice and of the district—the latter's tendency to confound experts by unexpected discoveries supporting the prospector's dictum that "ore is where you find it—" the price was not so large that it can be said it is clear there was no reasonable prospect of a larger price. Anaconda could *afford* to pay more than any other, but the question is, *did* it pay more than any other *would* have paid? And in view of the common directors of vender and vendee the minority stockholders were entitled to

* One of plaintiffs contributed 11000 shares of Alice to the Ryan purchase and immediately purchased more at a much higher price.

Because of common directors, the learned judge who granted the injunction held the burden was on defendants to clearly demonstrate the sale was fair, and the case was tried on that theory. This burden has not been sustained. It is not clear the price paid was substantially adequate, and so the court finds it was not.

It is impossible to reconcile the cases upon the law of common directors. See:

Cooke, Corporations, § 658 et seq.

Thompson, Corporations, §§ 1242, 1243.

Thomas vs. Ry. Co., 109 U. S. 522.

Leavenworth vs. Ry. Co., 134 U. S. 689, *where* -

The rule is a good one and general that ~~whenever~~ ever fiduciary relations exist and in discharge of duty there is conflict of interest, if the transaction is not void, as it often is, it is open to impeachment by the beneficiary, will be closely scrutinized by the court, and if the trustee does not make manifest its fairness, it may be set aside or other relief granted. Corporate transactions like this at bar ought to be subject to this rule. That the common directors were not a majority of either board is a difference in degree, but not in principle. They may have dominated the board. In both cases is divided duty, conflicting interest, possible impaired judgment of unknown effect, difficulty of proof and danger to stockholders. In either case inadequacy of price is unfairness and condemns without further inquiry in an attempt to determine whether due to corruption or honest but mistaken judgment unconsciously swayed by adverse interest. There is no safety otherwise.

The sale was incident to a consolidation of Butte copper properties and to all intents and purposes was by Butte Coalition to Amalgamated by reason of interlock and control in the relations of eight or nine corporations involved.

Ryan was vice president and director of Butte Coalition and president and director of Amalgamated, and he was president and director of Alice and director of Anaconda. B. B. Thayer was di-

rector of Butte Coalition and he was president and director of Anaconda. Not a majority of any board, the power and influence of Ryan and Thayer are obvious. It is fair to say, however, that though their private interest was not inquired into, and though their future lay with the quick and not with the dead of these corporations, there is nothing to inspire belief that they aimed at aught but fair bargaining, or that they designed injury to Alice and consciously abused their trust. Prejudice to Alice would be betrayal of Butte Coalition, organized by Ryan and of his associates and friends. Ryan knew less of Alice than was known to its stockholders from inspection and reports. He had not seen its flooded depths, but to one of plaintiffs they were familiar.

Some 2,000 feet from any Alice territory and in part within veins that may penetrate it, there was Anaconda incipient development of ore shoots and production of copper locally encouraging and known to Ryan but of little consequence in relation to Alice value and sale. Alice was idle when Ryan purchased control and at cost transferred it to Butte Coalition, and it so continued, but from no purpose but reluctance to then take the hazard of its financing and operation. It was more or less continuously worked in a small way by lessees and was open to examination and experiment upon its zinc-silver ores by any one. Therein was earlier failure of costly efforts, and during Butte Coalition's control of Alice there

were two extensive investigations by large zinc operators, both of whom reported adversely thereon. The magnitude of the price paid for Alice does not warrant suspicion; otherwise the larger the price, the greater the suspicion, neither logic nor law.

However, common directors and inadequacy of price invoke the rule aforesaid. Additional ground for relief is that the transaction was not a sale, but a swap. One year thereafter proceedings were instituted to dissolve and distribute the stock to Alice stockholders.

Now Alice had not capacity to acquire corporate stock save under exceptional circumstances—that disposition of its property was of urgent and immediate necessity, and that no cash purchaser was available or that by trade a substantially larger sum could be realized, or the like—absent here. It is of the contract between corporations and their stockholders that any sale of all corporate property to distribute proceeds to stockholders shall be for money, the ultimate measure of value. A stockholder is not bound to accept anything but money for his equitable share of corporate property nor bound to permit a sale to be made for other chattels or goods to be distributed. Although Alice directors personally contemplated sometime dissolution of Alice and distribution of the Anaconda stock, not finding expression, in contemporaneous board action, it did not deprive

the taking of the stock of the quality of a permanent investment.

In respect to this latter ground for relief the cases are likewise in conflict, perhaps more in relation to the nature of than to the right to relief. See Cook, Corporations, § 671.

The instant case in principal resembles Mason against Pewabic Mining Company, 122 U. S.

* It will be remembered that Butte Coalition controlled Alice and was heavily interested in Anaconda by reason of a trade of its own mining property, that is the Red Metal property to Anaconda for 500,000 shares of Anaconda stock.

interested, so far as the rights of minority stockholders are concerned.

The rule of the Pewabic case is that any stockholder can insist that any sale of all corporate property upon dissolution shall be to the highest bidder for cash, and not to a corporation in which the majority are interested and for its stock at prices fixed by them. *

In the matter of relief to be granted, it appears plaintiffs own 12,560 shares of Alice of 400,000 shares outstanding. At the time of sale Butte Coalition owned about 234,000 said shares. The sale was ratified by 289,590 shares, and opposed by 5,500. The answer alleges that since this suit commenced,

Alice stockholders, anxious to receive their proceeds of the sale, were accommodated by Amalgamated exchanging Anaconda stock for Alice stock upon the basis of the sale, to the extent of 353,446 Alice shares, and which includes that of Butte-Coalition, but no proof was made thereof.

In any event, at least 34,000 shares of Alice are owned by others than the parties hereto and Amalgamated. A court of equity will model relief so that all parties in interest, whether before the court or not, will be protected. As before stated, the majority could lawfully sell Alice. The minority's right was a fair sale for money to the end that each thereof received in money the value of his equity in Alice property. Their present right is to sufficient relief to still accomplish that end.

The sale is not to be unconditionally set aside, however, for unless the property can be sold for more the interest of all the parties hereto and of those stockholders who neither appeared nor complained, require it shall not be disturbed. The method of the Pewabic case will be followed as near as may be. The value of the Anaconda stock paid for Alice was \$1,500,000. Some \$300,000 dividends thereon have since been paid. What was the amount of debts and obligations of Alice assumed by Anaconda does not appear. The decree will provide that a re-sale will be made and provided when made if no bid greater than the total proceeds to Alice as above be made, and pro-

vided thereupon defendants pay to plaintiffs and all those entitled thereto the money value of their equity in the proceeds of the sale heretofore made; that is, their proportionate share of the market value of the Anaconda stock at the time of the sale and of the dividends thereon, no re-sale will be made and the sale involved will be undisturbed. Thereby defendants will gain no advantage, plaintiffs will suffer no loss, and all Alice stockholders will receive their just dues.

Further proof will be received and orders made to enable the decree to be executed.

BOURQUIN, J.,

May 1, 1915.

Filed May 1, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Memo Decision.

From forms submitted, it is apparent both parties desired merely an interlocutory decree, and such the court signs. So too, it is apparent therefrom that both parties contemplate that in the event of no greater bid than the upset price, it shall be not optional with but obligatory upon the Anaconda to pay Alice stockholders entitled thereto in money, and the court adopts their language and view.

The court does not now attempt to define who is entitled to the benefit of these proceedings. Of course, when a fund comes into the hands of a court from corporate liquidation, all stockholders

share therein and are properly noticed to appear. But here is no such case. Here, if no sale is made all stockholders are not entitled to be paid in money, but only those who did not consent to or acquiesce in the sale or who are not otherwise estopped. It is their duty to come in, to in effect take a place as litigants, and surely not the court's to seek them out and solicit them to do so.

The suit is pending near four years, ample time for any of them to appear. At the same time in view of the nature of the suit, the special relief sought, and the perhaps unforeseen determination, it is believed a limited time should still be allowed for any stockholder entitled, to appear and prove his right to share in the relief granted. Although most authorities are that in a stockholders suit it must be alleged it is for the benefit of all similarly situated, that it is for common benefit here is inevitable and has been so treated throughout. If necessary (doubtless not) amendment is permissible. It is believed the time fixed is none too long to secure fair bidding, and that the terms are conducive thereto. Bidding should not be chilled by compelling bidders to in advance tie up such a large sum of money as here involved.

While confirmation of the sale, by the court, is provided for, no bidder can safely rely upon bids being permitted in court. See *Pewabic Case*, 145 U. S. 349.

The time is past when masters or receivers are enriched by sales. Here, the master's services

are merely ministerial and his compensation will be accordingly. Perhaps \$500, if no sale, and fair addition if sale. If a sale is made, the master's bond will be then fixed. As the decree does not create or transfer a title but merely annuls the sale and deed to the Anaconda, it is believed no deed is necessary from Anaconda,—this in view of the principle that decrees operate in personam and do not transfer title to realty. The value of the Anaconda stock heretofore made—\$1,500,000. shall stand. Curiously enough though a high valuation is favorable to complainants and unfavorable to defendants, the former seem to desire to reduce it, the latter to maintain it. Doubtless both see some advantage in their respective positions but the court does not.

Any modification or further orders necessary will be made.

BOURQUIN, J.

Filed July 2, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation

IT IS HEREBY STIPULATED AND AGREED, that touching the matters set for hearing by the interlocutory decree herein on July 19, 1915, the facts are as follows, to-wit:

FIRST: The amount of debts and obligations of the Alice Gold and Silver Mining Company assumed and paid by the Anaconda Copper Mining Company as a part of the consideration of the

transfer to said Anaconda Copper Mining Company of the property of said Alice Gold and Silver Mining Company was, and is, the sum of thirty-four thousand eight hundred twenty-seven and 92-100 dollars (\$34,827.92); that there has not been any interest paid or payable upon said debts or obligations;

SECOND: That the reasonable and necessary expenditures made by the Anaconda Copper Mining Company, upon and in connection with the properties transferred to it by the Alice Gold and Silver Mining Company in the maintenance, repair, care, operation and mining of said property, including payment of taxes and assessments legally levied thereon, exceed the amount realized from said properties and from all ores mined or extracted therefrom by it, its lessees or those acting under it in and by the sum of fifteen thousand seven hundred eighty-three and 15-100 dollars (\$15,783.15);

THIRD: That the amount of dividends paid by the Anaconda Copper Mining Company to the Alice Gold and Silver Mining Company upon the stock of the Anaconda Copper Mining Company received by said Alice Gold and Silver Mining Company, in consideration of the transfer of said property is the sum of three hundred thirty-seven thousand five hundred dollars (\$337,500.00), and the amount of interest actually received thereon by said Alice Gold and Silver Mining Company is the sum of sixteen thousand

two hundred eighty and 12-100 dollars (\$16,-280.12), making the total of dividends and interest the sum of three hundred fifty-three thousand seven hundred eighty and 42-100 dollars (\$353,-780.42);

FOURTH: That an inventory and sufficient description of all property transferred by said Alice Gold and Silver Mining Company to said Anaconda Copper Mining Company, and which, by the interlocutory decree of this court made and entered on July 2, 1915, is ordered to be offered for sale or re-sale, is as follows, to-wit:

That certain quartz lode mining claim, patented, known as the ALICE lode claim, being survey No. Four hundred and sixty-six (466), in Sections one (1) and Twelve (12), Township Three (3) North, Range Eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four Hundred and eighty-three (483), in Sections Six (6), Seven (7), one (1) and Twelve (12), Township three (3) north, Range seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being Survey No. Six hundred and seventy-four (674), in Section twelve (12), township three (3), north, Range eight west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being Survey No. Four Hundred and sixty-seven (467), in Sections six (6) and seven (7), Township Three (3) north, Range seven (7), west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the ROONEY lode claim, being Survey No. Nine hundred and forty-seven (947), in sections one (1) and twelve (12), Township three (3) North, Range eight west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being Survey No. Nine hundred and forty-eight (948), in section twelve (12), Township three (3) north, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the REEF FRACTION lode claim, being Survey No. Fourteen Hundred and thirty-five (1435), in sections one (1) and six (6), Township three (3) north, Ranges seven (7) and eight (8) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNOLIA lode claim, being Survey No. Ten Hundred and sixty-two (1062), in section twelve township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, pat-

ented, known as the BOSTON lode claim, being Survey No. Ten hundred and sixty-six, in Section six (6), Township three (3) North, Range seven (7) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the COTTONWOOD lode claim, being Survey No. Nineteen Hundred and seventy (1970), in section six (6), Township three (3) North, Range seven (7) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the PLOVER NO. 1 lode claim, being Survey No. Eight hundred and five (805), in section one (1), Township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode claim, being Survey No. Eight hundred and fifty-seven (857), in section No. one (1) Township three (3), North, Range eight (8) west, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being Survey No. Eight hundred and ten (810), in Sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RISING STAR lode claim, be-

ing Survey No. Five hundred and sixty-one (561), in section No. Twelve (12), Township No. Three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain millsite, patented, known as the Alice Mill Site, being Survey No. Six hundred and seventy-four in Section Twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MIDNIGHT lode claim, being Survey No. Six hundred and seventy-six (676), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented known as the WALKERVILLE lode claim, being Survey No. Nine hundred and fifty (950), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the PAY MASTER lode claim, being Survey No. Eleven hundred and eighty (1180), in Section Twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RAY WALKER lode claim, being Survey No. Seventeen hundred and seventy-

six (1776), in Section Twelve (12), Township three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WOOD YARD lode claim, being Survey No. Nineteen hundred and sixty-nine (1969), in Section one (1), Township three (3) North, Range eight (8) West of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the GUSSETT lode claim, being Survey No. Fifteen hundred and twenty-eight (1528), in Section one (1), Township (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BLUE WING lode claim, being Survey No. Six hundred and seventy-five (675), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the NEPTUNE lode claim, being Survey No. Fifteen hundred and sixty-two (1562), in Section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided six-forty-eighths (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim being Survey No. Seventeen hundred and forty-

six (1746), in Section six (6) Township three (3) North, Ranges seven (7) and eight (8) West, of the Principal Meridian for Montana.

Also Lots seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), in Block four (4), lots three (3), four (4), six (6), seven (7), and eight (8), in Block five (5), and lots two (2), three (3) and four (4), in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said Addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also Lots thirteen (13), fourteen, fifteen (15) and sixteen (16), in Block thirteen (13); all that portion of Lot seventeen (17) described as follows: Forty (40) feet deep on north end, and sixty (60) feet by eight (8) feet wide on west end of Lot seventeen (17) of Block Thirteen (13).

Also the north forty (40) feet of Lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of Lot thirteen (13) in Block sixteen (16), being twenty (20) feet on the south end, and eighty (80) feet by four (4) feet wide on the west end of Lot three (3) in Block sixteen (16).

Lots four (4), five (5) and six (6) in Block Sixteen (16), and that portion being eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot six-

teen (16) in Block sixteen (16), and Lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); Lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18); Lots sixteen (16), seventeen (17), and eighteen (18); in Block nineteen (19), all being in West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver Bow County, Montana.

Also all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools and implements whatsoever owned by the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other water works and rights of way therefor, timber, timber rights, lands, easements and other real estate, improved and unimproved, owned by and belonging to the said Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable choses in action and possession of every kind, character and description, belonging to the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company, and the interest of said Alice Gold and Silver Mining Company in any and all property in which it may have had any interest on said 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company.

This description and inventory is not intended to, and does not, include the thirty thousand (30,000) shares of the stock of the Anaconda Copper Mining Company, or any other property, received by the Alice Gold and Silver Mining Company in consideration of its transfer to the Anaconda Copper Mining Company of the property above described since none of said consideration was subject to the transfer from Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company.

All the above described property is subject to all leases, releases, rights of way and other easements granted, made or given by the Alice Gold and Silver Mining Company, or its predecessors in interest before the 27th day of May, 1910, and also to all vested rights obtained by others against the said Alice Gold and Silver Mining Company, or its predecessors in interest by legal proceedings or by

adverse possession or user prior to the 27th day of May, A. D. 1910.

This stipulation may be filed with the Clerk of the above entitled court by either party thereto and when so filed it shall have the same force and effect as though, upon a hearing touching the matters set to be heard before the court on the 19th day of July, 1915, said facts had been established by the testimony and found by the court, and the court may make such findings and orders thereon and in relation thereto and with like effect as it might have made had such facts been established by the testimony and found by the court, upon the hearing set by the interlocutory decree, hereinbefore mentioned, to be had on the 19th day of July, 1915.

Dated July 15, 1915.

WALSH & NOLAN,

Solicitors for Complainants.

L. O. EVANS, W. B. RODGERS and

D. GAY STIVERS,

Solicitors for Defendants.

Filed July 19, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Findings.

On reading and filing the stipulation herein entered into between the parties hereto under date of July 15, 1915, the court finds in accordance with said stipulation and in accordance with the findings of the court heretofore made, that the total

proceeds received by the Alice Gold and Silver Mining Company for and on account of the properties by it transferred to the said Anaconda Copper Mining Company on the 27th day of May, 1910, are and amount to the sum of one million nine hundred and four thousand three hundred ninety-one and 7-100 dollars (\$1,904,391.07), which sum is the consideration which has been received by the Alice Gold and Silver Mining Company for the said transfer.

The property referred to in the said decree, as appears by the stipulation hereinabove referred to, and which is to be offered for sale, pursuant thereto, is specifically described as follows:

That certain quartz lode mining claim patented, known as the ALICE lode claim, being survey No. Four Hundred and sixty-six (466), in sections one (1) and twelve (12), Township Three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four hundred and eighty-three (483), in section Six (6), Seven (7), one (1) and Twelve (12), Township three (3), North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being survey No. Six hundred and seventy-four (674), in section twelve (12), township three (3) north,

Range eight west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being survey No. Four hundred and sixty-seven (467), in sections six (6) and seven (7), township three (3) North, Range seven (7) west, of the Principal Meridian for Montana.

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Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being survey No. nine hundred and forty-eight (948), in section twelve (12), township three (3), North, Range eight (8) west, of the Principal Meridian for Montana.

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eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BOSTON lode claim, being survey No. ten hundred and sixty-six, in section six (6), township three (3) North, Range seven (7) west of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the COTTONWOOD lode claim, being survey No. nineteen hundred and seventy (1970), in section six (6), township three (3) North, Range seven (7) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the PLOVER NO. 1 lode claim, being survey No. eight hundred and five (805), in section one (1), township three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode claim, being survey No. eight hundred and fifty-seven (857), in Section No. one (1), Township three (3), North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being Survey No. eight hundred and ten (810), in sections one (1) and six (6), township three (3)

North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **RISING STAR** lode claim, being Survey No. five hundred and sixty-one (561), in section No. twelve (12), Township No. Three (3) North, Range eight (8) west, of the Principal Meridian for Montana.

Also that certain millsite, patented known as the **ALICE MILLSITE**, being Survey No. six hundred and seventy-four in section twelve (12), Township three (3) North, range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **MIDNIGHT** lode claim, being survey No. six hundred and seventy-six (676), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the **WALKERVILLE** lode claim, being Survey No. nine hundred and fifty (950), in section twelve (12), Township three (3) North, Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the **PAY MASTER** lode claim, being Survey No. eleven hundred and eighty (1180), in section twelve (12), Township three (3) North,

Range eight (8) West, of the Principal Meridian for Montana.

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Range eight (8) West, of the Principal Meridian for Montana.

Also an undivided six-forty-eighths (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim, being survey No. seventeen hundred and forty-six (1746), in section six (6) Township three (3) North, Ranges seven (7) and eight (8) west, of the Principal Meridian for Montana.

Also lots seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), in Block four (4), lots three (3), four (4), six (6), seven (7) and eight (8), in Block five (5), and lots two (2), three (3), and four (4), in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said Addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also lots thirteen (13), fourteen, fifteen (15), and sixteen (16), in Block ~~thirteen~~^{thirteen} (13); all that portion of lot seventeen (17) described as follows: Forty (40) feet deep on north end, and sixty (60) feet by eight (8) feet wide on west end of lot seventeen (17) of Block thirteen (13).

Also the north forty (40) feet of lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of lot thirteen (13) in Block sixteen (16), being twenty (20) feet on the south end and eighty (80) feet by four (4) feet wide on the west end of lot three (3) in Block sixteen (16).

Lots four (4), five (5) and six (6) in Block sixteen (16), and that portion being eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot sixteen (16) in Block sixteen (16), and lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18); Lots sixteen (16), seventeen (17) and eighteen (18) in Block nineteen (19), all being in the West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver Bow County, Montana.

Also all of the mines, mining ground, mining rights, claim and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools and implements whatsoever owned by the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also all water and water rights, reservoir and reservoir rights, pipes, flumes, ditches, aqueducts and other water works and rights of way therefor, timber, timber rights, lands, easements and other

real estate, improved and unimproved, owned by and belonging to the said Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910.

Also any and all other properities, real, personal and mixed, corporeal and incorporeal, legal and equitable choses in action and possession of every kind, character and description, belonging to the Alice Gold and Silver Mining Company on the 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company, and the interest of said Alice Gold and Silver Mining Company in any and all property in which it may have had any interest on said 27th day of May, A. D. 1910, and which was transferred to the Anaconda Copper Mining Company.

This description and inventory is not intended to, and does not, include the thirty thousand (30,000) shares of the stock of the Anaconda Copper Mining Company, or any other property, received by the Alice Gold and Silver Mining Company in consideration of its transfer to the Anaconda Copper Mining Company of the property above described since none of said consideration was subject to the transfer from Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company.

Done in open court this 19th day of July, 1915.

GEO. M. BOURQUIN,

Judge.

Filed July 19, 1915. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]**Petition for Appeal and Allowance.**

The above named complainants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg, and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, Leopold Freund and Alice Frey, conceiving themselves aggrieved by the decree entered in the above entitled court, designated a preliminary decree, on the 2nd day of July, 1915, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and they pray that an appeal be allowed, and that a citation issue, as provided by law, and that a transcript of the records and proceedings upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that a proper order touching the security to be required of them to perfect their appeal be made.

T. J. WALSH,**C. B. NOLAN,****Solicitors for Complainants.**

[Order Allowing Appeal.]

The foregoing Petition is hereby granted, and the appeal is hereby allowed this 31 day of December, 1915, and the bond on appeal is hereby fixed at the sum of Three Hundred Dollars.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within petition for appeal made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed Dec. 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Assignment of Errors.

Now come the complainants above named and say that the decree herein, designated as an interlocutory decree, is erroneous, and file the following assignment of errors committed or happening in said cause, upon which they will rely on their appeal from said decree:

I.

It was error for the court not to find that the transfer of the property of the Alice Gold and Sil-

ver Mining Company to the Anaconda Copper Mining Company was in violation of the Sherman Anti-trust Act.

II.

It was error for the court not to hold and find, and so decree, on the record and on the evidence submitted that the deed transferring the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company, was null and void on account of the transfer of the property being in violation of the Sherman Anti-trust act.

III.

It was error for the court to hold and find and decree accordingly that it was within the right and within the authority of the Alice Gold and Silver Mining Company to sell all of its property as against the protest and dissent of any or a minority of its stockholders.

IV.

It was error for the court to hold and find that the sale of the property of the Alice Gold and Silver Mining Company could be made, receiving as a consideration therefor stock of the Anaconda Copper Mining Company, thus transforming the Alice Gold and Silver Mining Company, which was a mining corporation, into a stockholding corporation.

V.

It was error for the court not to hold and find and so decree that the sale of the property by the

Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was absolutely null and void because of substantial identity of parties who negotiated and carried out the sale of the property, to the parties who negotiated and carried out the purchase.

VI.

It was error for the court to hold and find, and so decree, that there was not such substantial identity of parties negotiating and carrying out the sale of the property, and negotiating and carrying out the purchase of the property.

VII.

It was error for the court not to hold and find that the purchase of the property by the Anaconda Copper Mining Company was made in the pursuit of a purpose, for which the Anaconda Copper Company was carried on in behalf of the Amalgamated Copper Co., namely, to monopolize the production of copper in the Butte camp, and the sale of the same in the markets of the world in violation of the Sherman Anti-trust Act, and that the Anaconda Copper Mining Company, in the purchase of the property under consideration was influenced by that purpose and that object.

VIII.

It was error for the court to hold and find, and decree accordingly, that the sale of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company should stand, unless a higher price could be obtained for

same at public sale than was obtained from the Anaconda Copper Mining Company.

IX.

It was error for the court not to hold and find and decree accordingly, that the sale by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was absolutely and unconditionally null and void, so that the title to the property would, without condition, be re-vested in the Alice Gold and Silver Mining Company.

X.

It was error for the court to hold and find and decree accordingly, that a public sale of the property in question should again take place through the agency of a master appointed for that purpose, and that bidders should deposit certified checks, as provided for, or their bids should not be considered, and that unless their bids exceeded the price paid for the property by the Anaconda Copper Mining Company, they should not be considered, and that the sale of the property to the Anaconda Copper Mining Company should stand.

XI.

It was error for the court to hold and find, and decree accordingly, that a resale of the property should take place instead of holding and finding, and so decreeing, that the deed conveying the property to the Anaconda Copper Mining Company was null and void.

XII.

It was error for the court to hold and find, and so decree, that a resale of the property should take place, and that if a price, upon such resale, was not obtained in excess of the price paid for the property by the Anaconda Copper Mining Company, that the sale made to the Anaconda Copper Mining Company should stand.

XIII.

It was error for the court not to hold and find, and decree accordingly, that the sale of the property to the Anaconda Copper Mining Company was absolutely and unconditionally null and void.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Due personal service of within Assignment of Errors made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed December 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Peter Geddes, Joseph R. Walker, Joseph S.

Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, as principals, and the Massachusetts Bonding & Insurance Company, as surety, are held and firmly bound unto the above named, Anaconda Copper Mining Company a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, in the sum of Three Hundred (300) Dollars, for the payment of which well and truly to be made, we bind ourselves jointly and severally, and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

SEALED with our seals and dated this 31st day of December, 1915.

WHEREAS, the above named complainants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered and entered in the above entitled cause in the United States District Court, for the District of Montana, on the 2nd day of July, 1915;

NOW, THEREFORE, The condition of this obligation is such that if the above named complainants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make good

their plea, then the above obligation to be void; otherwise, to remain in full force and virtue.

It is expressly agreed by the Massachusetts Bonding & Insurance Company, the surety above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days to said Massachusetts Bonding & Insurance Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said Company and award execution therefor.

Peter Geddes, (Seal) Joseph R. Walker, (Seal) Joseph S. Baer, (Seal) Henry S. Everett, (Seal) Margaret Ann Meehan, (Seal) Eugene Blum, (Seal) Isaac Blum, (Seal) Edward Blum, (Seal) Isador Baer, (Seal) Alphons Dreyfoos, (Seal) Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, (Seal) Leopold Freund, (Seal) Alice Frey, (Seal).

By WALSH & NOLAN,

Their Solicitors.

MASSACHUSETTS BONDING & INSURANCE CO.,

By SOL POZNANSKI,

Agent.

Attest:

J. R. WINE, JR.,

Attorney in Fact.

[Seal of Mass. B. & Ins. Co.]

The foregoing Bond on Appeal is hereby approved, both as to sufficiency and form, this 31 day of December, 1915.

GEO. M. BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Filed Dec. 31, 1915. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Citation on Appeal.

United States of America, ss.

The President of the United States to Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, and to C. F. Kelley, Esq., L. O. Evans, Esq., W. B. Rodgers, Esq. and D. Gay Stivers, Esq., their solicitors and counsel:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, in and for the District of Montana, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Com-

pany; Leopold Freund and Alice Frey, are the complainants, and the Anaconda Copper Mining Company; a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan are the defendants, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable William W. Morrow, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 31 day of December, 1915.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within citation made and admitted and receipt of copy acknowledged this 31st day of December, 1915.

C. F. KELLEY,
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed Dec. 31, 1916, Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

**Praeipice Showing Portions of Record to Be Incorporated
Into Transcript on Appeal Taken in the Above En-
titled Cause Pursuant to the Requirements of Equity
Rule No. 75.**

1. Amended complaint of Complainants and Appellants;
2. Answers of the defendants and appellees, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan;
3. Motion for temporary restraining order and injunction;
4. Order granting temporary restraining order and injunction;
5. Memorandum decision allowing temporary restraining order and injunction;
6. Praecipe showing no service upon defendants, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;
7. Condensed narrative statement of evidence adduced at trial;
8. Stipulation and order as to maps;
9. Memorandum decision of court;
10. Findings of court;
11. Stipulation as to facts;
12. Interlocutory decree;
13. Petition for the allowance of appeal and allowance of same;
14. Assignment of Errors;
15. Bond on appeal;
16. Citation on appeal;
17. Certificate of Clerk.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Appellants.

Due personal service of foregoing praecipe

made and admitted and receipt of copy acknowledged this 11th day of January, 1916.

C. F. KELLEY,
L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining pany, and John D. Ryan.

Filed Jan. 17, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

[**Memo. Decision.**]

The plaintiffs proved a cause of action and secured relief. Although not to the extent demanded and perhaps without profit, this relief makes them none the less the prevailing party and so in equity entitled to "costs from one party to another."

But attorneys fees are a different matter. Investigation to which tentative views must yield, discloses that in equity they are not costs *eo nomine*, but on occasion are allowed upon equitable principles out of some fund protected or recovered by the services for which they are claimed and which fund is in court for distribution. They are allowed out of the fund upon the well-understood theory that they are for services rendered not as a mere volunteer but for good reason by one interested party for the benefit of and to the profit of another interested party and for which

in equity and good conscience the latter ought to porportionately pay. The latter pays because he benefits by the other's agency, and ratifies the agency by taking the benefit. And the fund being in court, the court awards the fees as proper expense and costs, not from party to party generally, but from the party benefited to the party who rendered the service and paid the expense. This being the principle upon which such fees are allowable if the basic facts are absent no allowance can be made—the principle forbids allowance. In this suit while plaintiffs sue for the benefit of the Alice Company and the majority of its stockholders as well as themselves it is against the will of all others than themselves. All others were satisfied with the sale or at least content to let it stand. Plaintiffs' efforts resulted in the recovery of no property or fund but only in finally confirming an irregular sale of Alice property. There was no benefit, no profit to the Alice and the majority of stockholders but on the contrary there was actual loss and injury—delay in Alice administration and costs for Alice to pay decreasing every Alice stockholder's equity in Alice property. So it is apparent there is no ground upon which to compel Alice to pay plaintiffs' expense for attorneys to carry on litigation to Alice's detriment. The reason for an allowance here fails and so no allowance can be made. Against the judgment and will of Alice and the majority stockholders, plaintiffs set their judgment. They failed to ben-

efit any one save perhaps some special benefit to themselves. And so as in any case where one sues for his own benefit they must pay their attorneys. Any other rule would encourage suits to right harmless corporate irregularities of administration. Hence, no allowance for attorneys fees from the Alice to plaintiffs is made.

The decree herein is signed, but the court is of opinion that plaintiffs have a reasonable time after the decree becomes final upon appeal, within which to exercise their privilege of demanding money and not Anaconda stock for their Alice stock.

Filed Feb. 4, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Stipulation.

WHEREAS, the complainants in the above entitled action are desirous of prosecuting an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered herein on the 2nd day of July, 1915, and also from the decree made and entered herein on the 4th day of February, 1916; and,

WHEREAS, a praecipe has heretofore been filed herein showing the portions of record to be incorporated in the transcript on appeal from said decree entered herein on July 2, 1915, and another praecipe is to be filed herein showing the portions of record to be incorporated in the transcript on appeal from the decree signed and entered on Feb-

ruary 4, 1916, which said praecipe is practically identical with the praecipe already filed, and it is desired to avoid duplication in printing said transcript; and,

WHEREAS, it is deemed desirable for clearness and convenience to consolidate into one transcript the two records on appeal from the two decrees above mentioned;

NOW, THEREFORE, It is stipulated and agreed by and between the complainants and the answering defendants that the two records on the said two appeals, viz, the appeal from the decree signed and entered herein on July 2, 1915, and the appeal from the decree signed and entered herein on February 4, 1916, may be consolidated into, and printed as, one transcript which, when filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit may be considered and referred to on the hearing, consideration and determination of either or both of said appeals by the said United States Circuit Court of Appeals, with the same force and effect as though separate transcripts had been filed on each of said appeals, and that where any paper, file or portion of the record is mentioned in both praecipis, it shall only be necessary to print such paper, file or portion of the record in said transcript once, thus avoiding duplication.

IT IS FURTHER STIPULATED, That this stipulation be incorporated and printed in said transcript.

Dated this 31st day of March, 1916.

L. O. EVANS, W. B. RODGERS and
D. GAY STIVERS,

Solicitors for Answering Defendants.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Petition for Appeal and Allowance.

The above named complainants, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, and Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company, Leopold Freund and Alice Frey, conceiving themselves aggrieved by the decree rendered and entered in the above entitled court on the 4th day of February, 1916, in the above entitled cause, do hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herein, and they pray that an appeal be allowed, and that a citation issue as provided by law, and that a transcript of the records and proceedings upon which said decree was based duly authenticated may be sent to the Unit-

ed States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that a proper order, touching the security to be required of them to perfect their appeal be made.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

[Order Allowing Appeal.]

The foregoing Petition is hereby granted, and the appeal is hereby allowed this 31 day of March, 1916, and the bond on appeal is hereby fixed at the sum of three hundred dollars (\$300.00).

GEO. M. BOURQUIN,

Judge of the District Court of the United States,
for the District of Montana.

Due personal service of the foregoing Petition for Appeal made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Assignment of Errors.

Now come the complainants above named and

say that the final decree herein, embracing the interlocutory decree so-called, is erroneous and file the following assignment of errors committed or happening in said cause upon which they will rely on their appeal from said decree:

I.

It was error for the court not to find that the transfer of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was in violation of the Sherman Anti-Trust Act.

II.

It was error for the court not to hold and find, and so decree, on the record and on the evidence submitted that the deed transferring the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was null and void on account of the transfer of the property being in violation of the Sherman Anti-Trust Act.

III.

It was error for the court to hold and find and decree accordingly that it was within the right and within the authority of the Alice Gold and Silver Mining Company to sell all of its property as against the protest and dissent of any or a minority of its stockholders.

IV.

It was error for the court to hold and find that the sale of the property of the Alice Gold and Silver Mining Company could be made, receiving as

a consideration therefor stock of the Anaconda Copper Mining Company, thus transforming the Alice Gold and Silver Mining Company, which was a mining corporation, into a stockholding corporation.

V.

It was error for the court not to hold and find and so decree that the sale of the property by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was null and void because of substantial identity of parties who negotiated and carried out the sale of the property, and the parties who negotiated and carried out the purchase.

VI.

It was error for the court to hold and find and so decree that there was not such substantial identity of parties carrying out the sale of the property, and negotiating and carrying out the purchase of the property.

VII.

It was error for the court not to hold and find that the purchase of the property by the Anaconda Copper Mining Company was made in the pursuit of a purpose for which the Anaconda Copper Mining Company was carried on in behalf of the Amalgamated Copper Company, namely, to monopolize the production of copper in the Butte camp and the sale of the same in the markets of the world in violation of the Sherman Anti-trust Act, and that the Anaconda Copper Mining Com-

pany in the purchase of the property under consideration was influenced by that purpose and that object.

VIII.

It was error for the court to hold and find and decree accordingly that the sale of the property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company should stand, unless a higher price could be obtained for same at public sale than was obtained from the Anaconda Copper Mining Company.

IX.

It was error for the court not to hold and find and decree accordingly that the sale by the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company was unconditionally null and void; so that the title to the property would, without condition, be re-vested in the Alice Gold and Silver Mining Company.

X.

It was error for the court to hold and find and decree accordingly that a public sale of the property in question should again take place through the agency of a master appointed for that purpose, and that bidders should deposit certified checks, as provided for or their bid should not be considered, and that unless their bids exceeded the price paid for the property by the Anaconda Copper Mining Company they should not be considered, and that the sale of the property to the Anaconda Copper Mining Company should stand.

XI.

It was error for the court to hold and find and decree accordingly that a re-sale of the property should take place instead of holding and finding and so decreeing, that the deed conveying the property to the Anaconda Copper Mining Company was null and void.

XII.

It was error for the court to hold and find and so decree that a re-sale of the property should take place, and that if a price upon such re-sale was not obtained in excess of the price paid for the property by the Anaconda Copper Mining Company, that the sale made to the Anaconda Copper Mining Company should stand.

XIII.

It was error for the court to order and decree that the sale and transfer of the mining ground and premises and property of the Alice Gold and Silver Mining Company to the Anaconda Copper Mining Company had on or about the 27th day of May, 1910, be affirmed and be valid and binding.

XIV.

It was error for the court to hold and find and so decree that the Anaconda Copper Mining Company got good and valid title to the property of the Alice Gold and Silver Mining Company on account of the sale and transfer of said property made on or about the 27th day of May, 1910.

XV.

It was error for the court to hold and find and

so decree that the Anaconda Copper Mining Company as against the Alice Gold and Silver Mining Company is the owner of the mining ground and premises covered by the transfer of the 27th of May, 1910.

XVI.

It was error for the court to hold and find and so decree that the complainants were not entitled, as a portion of the costs in the pending litigation, to reasonable attorney's fees.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Complainants.

Due personal service of within Assignment of Errors made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,

W. B. RODGERS,

D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[*Same Title of Court and Cause.*]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, That we, Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos,

Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, as principals, and the Massachusetts Bonding & Insurance Company, as surety, are held and firmly bound unto the above named, Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, in the sum of three hundred dollars (\$300.00) for the payment of which well and truly to be made, we bind ourselves jointly and severally and each of our heirs, executors, administrators, successors and assigns firmly by these presents.

Sealed with our seals and dated this 31st day of March, 1916.

WHEREAS, the above named complainants have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse a decree rendered and entered in the above entitled cause in the United States District Court, for the District of Montana, on the 4th day of February, 1916;

NOW, THEREFORE, The condition of this obligation is such that if the above named complainants shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make good their plea, then the above obligation to be void; otherwise, to remain in full force and virtue.

It is expressly agreed by the Massachusetts

Bonding & Insurance Company, the surety above named, that in case of a breach of any condition of this bond, the court may, upon notice of not less than ten days to said Massachusetts Bonding & Insurance Company, proceed summarily in this action to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment against said company and award execution therefor.

Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos, Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund, Alice Frey,

By T. J. WALSH,

C. B. NOLAN,

Their Solicitors.

MASSACHUSETTS BONDING & INSURANCE CO.

By SOL POZNANSKI, Agent

Attest:

J. R. WINE, JR.,

Attorney in Fact.

[Seal of Mass. B. & Ins. Co.]

The foregoing bond is approved this 31st day of March, 1916, both as to sufficiency and form.

GEO. M. BOURQUIN,

Judge.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

*[Same Title of Court and Cause.]***Citation on Appeal.**

United States of America, ss.

The President of the United States to Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan, and to C. F. Kelley, Esq., L. O. Evans, Esq., W. B. Rodgers, Esq., and D. Gay Stivers, Esq., their solicitors and counsel:

You are hereby cited and admonished to be and appear before the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, State of California, within thirty days from the date hereof, pursuant to an appeal filed in the office of the Clerk of the District Court of the United States, in and for the District of Montana, wherein Peter Geddes, Joseph R. Walker, Joseph S. Baer, Henry S. Everett, Margaret Ann Meehan, Eugene Blum, Isaac Blum, Edward Blum, Isador Baer, Alphons Dreyfoos; and Alphons Dreyfoos, Eugene Blum, David C. Goldenberg and Eugene Bascho, co-partners doing business under the firm name and style of Dreyfoos, Blum & Company; Leopold Freund and Alice Frey, are the complainants, and the Anaconda Copper Mining Company, a corporation, Alice Gold and Silver Mining Company, a corporation, and John D. Ryan are the defendants, to show cause, if any there be, why the decree in the said appeal mentioned should not be corrected, and

why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable George M. Bourquin, Judge of the United States District Court, District of Montana, this 31st day of March, 1916.

GEO. M. BOURQUIN,
Judge of the District Court of the United States,
for the District of Montana.

Due personal service of within citation made and admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,
Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Praeipice Showing Portions of Record to Be Incorporated Into Transcript on Appeal Taken From Decree Entered February 4, 1916, in the Above Entitled Cause Pursuant to the Requirements of Equity Rule No. 75.

1. Amended complaint of complainants and appellants;
2. Answers of the defendants and appellees, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company and John D. Ryan;
3. Motion for temporary restraining order and injunction;

4. Order granting temporary restraining order and injunction;

5. Memorandum decision allowing temporary restraining order and injunction;

6. Praeceptum showing no service upon defendants, J. W. Allen, W. D. Thornton, A. C. Carson and E. S. Ferry;

7. Condensed narrative statement of evidence adduced at trial;

8. Stipulation and order as to maps;

9. Memorandum decision of court;

10. Findings of court;

11. Stipulation as to facts;

12. Interlocutory decree;

13. Final decree and memorandum decision accompanying same;

14. Appeal papers on appeal from final decree, viz:

Petition for the allowance of appeal and allowance of same;

Assignment of Errors;

Bond on appeal; and

Citation on Appeal;

15. Stipulation as to consolidation of transcript, etc.

16. Certificate of Clerk.

T. J. WALSH,

C. B. NOLAN,

Solicitors for Appellants.

Due personal service of foregoing praecipe

made admitted and receipt of copy acknowledged this 31st day of March, 1916.

L. O. EVANS,
W. B. RODGERS,
D. GAY STIVERS,

Solicitors for Defendants, Anaconda Copper Mining Company, Alice Gold and Silver Mining Company, and John D. Ryan.

Filed March 31, 1916. Geo. W. Sproule, Clerk.

[Same Title of Court and Cause.]

Statement.

BE IT REMEMBERED That the above entitled action came regularly on for trial and final hearing before the Honorable George M. Bourquin, Judge of the said court, on the 18th day of June, 1914, upon said cause being called for trial, T. J. Walsh, Esq. and C. B. Nolan, Esq. appeared as solicitors for the complainants, and L. O. Evans, Esq. and W. B. Rodges, Esq. appeared as solicitors for the answering defendants. Thereupon the following proceedings were had and done and the following evidence and none other was introduced, to-wit:

(By MR. WALSH.)

Sometime in the month of February, 1911, an application was heard before the court, Judge Hunt presiding, for a provisional injunction restraining the Alice Gold & Silver Mining Company pending the determination of the action from disposing of the thirty thousand shares of stock of

the Anaconda Copper Mining Company, which it received in exchange for the property in order that on the final hearing, that should a decree be awarded in favor of the Alice Gold & Silver Mining Company, it would have the thirty thousand shares of stock of the Anaconda Copper Mining Company to return to that Company. Upon that hearing, both oral and documentary evidence was submitted to the Court, and it is agreed between counsel that the testimony thus submitted upon the preliminary application may be read in the record on this hearing with the same force and effect as though the witnesses were personally present and testifying.

Mr. Walsh: We desire to offer in evidence, if Your Honor please, the Articles of Incorporation of the Alice Gold & Silver Mining Company.

(The said Articles of Incorporation were thereupon marked "Complainants' Exhibit 1" and are in the words and figures following:)

Complainants' Exhibit 1.

**[Articles of Incorporation—Alice Gold & Silver
Mining Co.]**

STATE OF UTAH

EXECUTIVE DEPARTMENT.

Office of the Secretary of State.

I, Charles S. Tingey, Secretary of State of the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of a certified copy of the Articles of Incorporation of the
"ALICE GOLD & SILVER MINING COMPANY,"

Anaconda Copper Mining Co. et al. 239

filed in this office March 17th, 1880; also of amendment to said Articles of Incorporation filed June 21st, 1906, as appears on file in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of Utah, this 27th day of December, A. D. 1911.

C. S. TINGEY,

Secretary of State.

[Seal]

By H. L. CUMMINGS, Deputy.

ARTICLES OF INCORPORATION
of the
ALICE GOLD & SILVER MINING COMPANY.

UNITED STATES OF AMERICA.

Territory of Utah,

County of Salt Lake, ss.

The undersigned, whose full names and places of residence are:

Samuel S. Walker,

Salt Lake City, Utah Territory.

Joseph R. Walker,

Salt Lake City, Utah Territory.

David F. Walker,

Salt Lake City, Utah Territory.

Matthew H. Walker,

Salt Lake City, Utah Territory.

Charles K. Gilchrist,

Salt Lake City, Utah Territory.

Henry W. Lawrence,

Salt Lake City, Utah Territory.

for the purpose of forming a corporation under Chapter IV, of Title XI, of the Compiled Laws of Utah, entitled "Of Incorporations for General Purposes," and acts amendatory thereof and supplementary thereto, do hereby associate and agree as follows:

I.

The name of the corporation hereby formed shall be: Alice Gold & Silver Mining Company, and said corporation is organized at the City and County of Salt Lake, in the Territory of Utah.

II.

The Corporation shall exist fifty (50) years, unless sooner dissolved according to law.

III

The business and pursuit of the corporation shall be to buy, sell, lease, hold, own and operate mines, mining claims, mills, mill sites, furnaces and reduction and refining works; to buy, sell, and exchange mineral ores and bullion; to buy, lease, construct and operate roads, tramways and freight and transportation routes—to facilitate the business of the Company; to appropriate buy and sell water, water rights and ways for conducting the same, and generally to do all kinds of business incidental to, connected with, or convenient for the management of a general mining business, in the Territory of Utah, Montana, Idaho, and in any State or Territory of the United States.

IV.

The principal place of business and general of-

office of the Corporation shall be at Salt Lake City, Utah Territory, but financial, transfer, and registry offices may be established at any other place or places in the United States and Territories, by the Board of Directors.

V.

The amount of capital stock of the Corporation shall be ten million (10,000,000) Dollars, divided into four hundred thousand shares of the denomination of twenty-five (25) Dollars each.

VI.

The amount of capital stock subscribed by the Corporators, parties hereto, is as follows:

	No. of Shares	Amount cents
Joseph R. Walker.....	399,500	\$9,987,500
Samuel S. Walker	100	2,500
David F. Walker.....	100	2,500
Matthew H. Walker	100	2,500
Charles K. Gilchrist.....	100	2,500
Henry W. Lawrence	100	2,500
	<hr/> 400,000	<hr/> \$10,000,000

VII.

The officers of the Corporation shall be: A Board of Directors of not less than nine (9) members; a President, a Vice-President, Treasurer and Secretary, and Assistant Secretary. The President, Vice-President and Treasurer shall be Directors; and to be eligible to any office, except Secretary and Assistant Secretary a person must be the owner in his own right, as shown by the books

of the Corporation, of not less than one hundred shares of capital stock.

VIII.

There shall be a meeting of Stockholders for the election of officers, on the second Tuesday of January 1881, and annually thereafter, but the time of holding annual meetings may be changed at any annual meeting of the Stockholders, and such elections shall be held at the office of the Company in Salt Lake City, Utah.

IX.

The term of office of all officers, except when a vacancy is filled, and except as provided in section 10, shall be one year, and until ——— successors are elected and qualified.

X.

Until the first annual meeting of the Stockholders and the election and qualification of officers, the following named persons shall be Directors. to-wit: Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Charles K. Gilchrist and Henry W. Lawrence of Salt Lake City, and W. S. Dunn, W. B. Leonard & J. C. Babcock of New York City and the said Joseph R. Walker shall be President, Samuel S. Walker Vice-President, Matthew H. Walker, Treasurer, and Benjamin G. Raybould, Secretary, and Robert G. Lansing, Assistant Secretary.

XI.

The Board of Directors may fill vacancies in the Board or any of the offices of the Corporation until the next annual meeting, and except as other-

wise provided shall exercise all the powers vested in the corporation by law or by these articles.

XII.

The private property of the Stockholders shall not be liable for the debts or liabilities of the Corporation.

XIII.

The associates hereto and said Corporation propose to purchase, hold, and operate the following mining property, to-wit:

The Alice Lode and Mining claim as patented by the United States to Joseph R. Walker July 25th, 1877, said mining claim having been located by Rolla Bucher on the 2d day of January 1875 and the notice filed for record January 12th, 1875.

The Alice Mill Site near said Alice Lode located by Joseph R. Walker, July 16th, 1877, and the notice filed for record July 21st, 1877. The Rooney Lode and Mining claim located the 7th day of February 1878, and the notice filed for record Feb. 21, 1878. All the right, title and interest of Joseph R. Walker in the Curry Lode and mining claim, as described in the official Survey for patent, said claim being located January 15th, 1877 and the notice filed for record January 25th, 1877. Together with all the Buildings, Mill, Furnaces, improvements and appurtenances;—All of said properties are situated in the Summit Valley Mining District, in Deer Lode County and Territory of Montana. And we agree for ourselves and said corporation to purchase said properties and pay therefor four hundred thousand shares of the

capital stock of said corporation; and the said Joseph R. Walker, one of the subscribers hereto covenants and agrees that he holds the legal titles to said described properties in trust to convey the same, and that he will convey the same to said corporation, on its organization, and receive in full payment therefor said four hundred thousand shares of capital stock, to be issued by said corporation, to him and to his associate subscribers hereto, in the several amounts by each subscribed.

XIV.

The Board of Directors may enact By-Laws for the regulation and government of the business and affairs of the corporation.

XV.

The Capital stock of said company shall be non-assessable and no assessment shall be levied or collected on or from the stock or stockholders.

WITNESS our hands and seals, the sixteenth day of March, 1880.

Samuel S. Walker, (Seal.)

Joseph R. Walker, (Seal.)

David F. Walker, (Seal.)

Matthew H. Walker, (Seal.)

Charles K. Gilchrist, (Seal.)

Henry W. Lawrence, (Seal.)

 (Seal.)

(Seal.)

(Seal.)

In the presence of—The words “and assistant Secretary” twice intentional in Sec. VII and the

words "nor more than thirteen" in the same Sec. erased; and Sec. xii written over a covered erasure before signing.

E. Smith,
Theo. McKeen,
Edward W. Wiggins.

Territory of Utah,
Salt Lake County, ss.

Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Charles K. Gilchrist & Henry W. Lawrence being each duly sworn, doth each for himself depose and say; I am one of the subscribers to the foregoing Agreement of Incorporation of the Alice Gold and Silver Mining Company; it is bona fide my intent, and the intent of the subscribers to said agreement, to commence and carry on the business mentioned in said agreement, and I verily believe that each subscriber and party to the said agreement is able to pay and will pay the amount of ^{the} ~~the~~ stock subscribed in the manner specified in said articles and agreement of Incorporation.

Samuel S. Walker,
Joseph R. Walker,
David F. Walker,
Matthew H. Walker,
Charles K. Gilchrist,
Henry W. Lawrence.

Subscribed and sworn to before me, March 16th,
1880.

E. SMITH, Probate Judge,
Salt Lake County, Utah Territory.

Territory of Utah,
Salt Lake County, ss.

On this sixteenth day of March 1880, before me Probate Judge in & for the County of Salt Lake, Utah, personally came Samuel S. Walker, Joseph R. Walker, David F. Walker, Matthew H. Walker, Henry W. Lawrence & Charles K. Gilchrist to me personally known to be the same persons named in and who subscribed the foregoing Agreement for the incorporation of the Alice Gold & Silver Mining Company, and they acknowledged that they and each of them executed said Agreement freely and voluntarily, and for the uses and purposes therein mentioned.

E. SMITH,
Probate Judge
Salt Lake Co. Utah.

*In the Probate Court in and for Sale Lake County,
Utah Territory. In the Matter of the Incorporation of the*

"ALICE GOLD AND SILVER MINING COMPANY."

The Agreement, of the Corporators and oath and acknowledgment thereto, having been filed and recorded, and the official bonds and oaths of office of the officers filed and approved; I order and direct that the clerk of this Court issue to said Corporation, under the Seal of the Court, a certificate thereof, as provided in Section 533 of the Compiled Laws of Utah, being Sec. 5 of Chapter

IV of Title XI of said Compiled Laws.

Dated March 16th A. D. 1880.

ELIAS SMITH

Probate Judge,

Salt Lake County, Utah.

UNITED STATES OF AMERICA.

Territory of Utah

County of Salt Lake, ss.

To the "Alice Gold and Silver Mining Company."

I, Dirk Bockholt, Clerk of the Probate Court in and for Salt Lake County and Territory of Utah, under the Authority and by the direction of the Honorable Elias Smith, Judge of said Court, do hereby certify; That the "Alice Gold and Silver Mining Company," has this day duly filed in my said office, the Agreement of Incorporation of said Company: Together with the oath and acknowledgment of four of the Corporators,—the official Bond and Oath of office of the officers thereof as required by the Act of the Governor and Legislative Assembly of the Territory of Utah, Chapter IV, Title XI, Compiled Laws of Utah Territory 1876, entitled "Of Incorporations for General Purposes," and all other laws amendatory to, or in aid thereof. All of which are this day approved by the said Probate Judge—and said "Alice Gold and Silver Mining Company" by virtue of the premises aforesaid, is hereby created and constituted a body corporate, with right of succession as specified in said Agreement of Incorporation.

And the said company is authorized to exercise all the functions, enjoy all the privileges of a cor-

poration and to transact all business of said corporation as specified in the said agreement of Incorporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court, at my office in Salt Lake City, Salt Lake County, and Territory of Utah, this sixteenth (16th) day of March, A. D. 1880.

D. BOCKHOLT,

Clerk of the Probate Court,

[Seal] Salt Lake County, Utah Territory.

[Filed in the clerk's office Probate Court, March 16, 1880. D. Bockholt, Clerk.]

Territory of Utah

County of Salt Lake, ss.

I, DIRK BOCKHOLT, Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah, do hereby certify that the foregoing six (6) pages numbered from one (1) to six (6) inclusive, contain a full, true and correct transcript of the agreement of Incorporation, and the Certificate of Incorporation issued by the Clerk of said Court, and the order and direction of the Probate Judge of said County to said Clerk: in the matter of the Incorporation of the "Alice Gold and Silver Mining Company" on file and of record in my office.

WITNESS my Hand and the Seal of said Probate Court, at my office, at Salt Lake City, in said

County and Territory this sixteen (16th) day of
March A. D. 1880.

DIRK BOCKHOLT,

Clerk of the Probate Court of

[Seal.] Salt Lake County, Territory of Utah.

Territory of Utah,

County of Salt Lake, ss.

I, ELIAS SMITH, Judge of the Probate Court in and for the County of Salt Lake and Territory of Utah, do hereby certify that Dirk Bockholt, by whom the annexed and foregoing certificate and attestation were made and given, and who in his own proper hand writing has hereunto subscribed his name, and affixed his official seal, was at the time of so doing, and now is Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah, duly commissioned and qualified, to all whose acts as such clerk, full faith and credit are and ought to be given, as well in Courts of Jurisdiction, as elsewhere; and that the said Transcript certificate and attestation are in due form and made by the proper officer.

IN WITNESS WHEREOF, I have hereunto set my hand the sixteenth (16th) day of March in the Year of our Lord, one thousand, eight hundred and eighty (1880.)

ELIAS SMITH,

Probate Judge.

Territory of Utah,

County of Salt Lake, ss.

I, DIRK BOCKHOLT, Clerk of the Probate

Court in and for the County of Salt Lake and Territory of Utah, do hereby certify, that the Honorable Elias Smith, by whom the foregoing attestation was made, and whose genuine signature is subscribed thereto, was at the time of signing the same and still is, Judge of the Probate Court in and for the said County of Salt Lake, and Territory of Utah, duly commissioned and sworn, to whose acts as such Judge full faith and credit are due.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said Probate Court at my office, at Salt Lake City, Salt Lake County, and Territory of Utah, this sixteenth (16th) day of March A. D. 1880.

[Seal.]

DIRK BOCKHOLT,

Clerk of the Probate Court in and for the County of Salt Lake and Territory of Utah.

[Filed in the office of the Secretary of Utah, this seventeenth day of March A. D. 1880.]

ARTHUR L. THOMAS,

Secretary of Utah Ter.

State of Utah,
County of Salt Lake, ss.

We, the undersigned, M. H. Walker, and L. H. Farnsworth, respectively President and Secretary of the ALICE GOLD AND SILVER MINING COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Utah, do hereby certify that, at a special meeting of the

stockholders of said Alice Gold and Silver Mining Company, convened pursuant to a resolution of the board of directors in accordance with the by-laws of said company and of the laws of the State of Utah, and held at the principal office and place of business of the company in the City of Salt Lake, Utah, on June 21, 1906, at ten o'clock A. M., the Articles of Incorporation of said company were amended by a vote representing more than a majority of the outstanding capital stock thereof, and that all of the stock represented at said meeting voted in favor of such amendments; that due notice of said meeting, as prescribed in Section 339 of the Revised Statutes of Utah of 1898, as amended by Chapter 94 of the Laws of Utah, 1903, had been given of said meeting, which said notice duly stated the nature of the proposed changes and amendments and the time and place of such meeting; and that such amendments are in the words and figures following, to-wit:

"RESOLVED, that the Seventh paragraph or article of the Articles of Incorporation of the Alice Gold and Silver Mining Company be amended, so that the same shall read as follows, to-wit:

"VII. The officers of the corporation shall be a Board of Directors of not less than five members, a President, Vice President, Treasurer and Secretary and Assistant Secretary. The President, Vice President and Treasurer shall be directors; and to be eligible to any office except Secretary and Assistant Secretary, a person must be the owner in his own right, as shown by the books of

the corporation, of not less than one hundred shares of the capital stock. Meetings of the Directors for the transaction of any business of the corporation may be held at the principal office of the corporation in the State of Utah, or at such place or places outside of the State of Utah, or elsewhere within such State, as the Directors may by resolution or by-laws provide."

Dated at Salt Lake City, State of Utah, this 21st day of June, A. D. 1906.

M. H. Walker, (Seal.)

President.

L. H. Farnsworth, (Seal.)

Secretary.

State of Utah,
County of Salt Lake, ss.

On this 21st day of June, A. D. 1906, personally appeared before me M. H. Walker, one of the signers of the above instrument, who duly acknowledged to me that he executed the same.

WILLARD HAMER,

[Seal.] Notary Public.

My commission expires, May 16, 1909.

State of Utah,
County of Salt Lake, ss.

I. J. U. ELDREDGE, JR., County Clerk in and for the County of Salt Lake, in the State of Utah, do hereby certify that the foregoing is a full, true and correct copy of the original Amendment to the Articles of Incorporation of the Alice Gold and

Silver Mining Company, as appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, this 21 day of June A. D. 1906.

J. U. ELDREDGE, JR.,

County Clerk.

[Seal.]

By EVELYN EDDINGTON,

Deputy Clerk.

Endorsed: Alice Gold and Silver Mining Company.

AMENDMENT.

Filed and Certificate issued this 21 day of June 1906.

C. S. TINGEY,

Secreary of State.

Squires.

Mr. Walsh: I suppose you gentlement will admit the corporate capacity of the Anaconda Company, and that it has the powers indicated in the bill.

Mr. Evans: Yes.

Mr. Walsh: We then offer in evidence, if the Court please, certified copy of a deed, the purpose of which is to show the sale from the Alice Company to the Anaconda Company.

(Said Deed was marked "Complainants' Exhibit 4, and is in words and figures following:)

Complainants' Exhibit 4.

[Deed Alice Co to Anaconda Co., Dated May 31, 1900.]

THIS INDENTURE, made the 31st day of May, A. D., 1910, between the ALICE GOLD AND SIL-

VER MINING COMPANY, a Utah Corporation, party of the first part, and the ANACONDA COPPER MINING COMPANY, a Montana Corporation, party of the second part, WITNESSETH;

Said party of the first part, for and in consideration of the issuance and payment to it of Thirty Thousand (30,000) shares of the full paid capital stock of the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed, assigned, transferred and set over, and by these presents does hereby grant, bargain, sell, convey, assign, transfer, and set over, unto the said party of the second part, and its successors and assigns forever, all of the following described property, real, personal and mixed, situate, in Silver Bow County, Montana, to-wit:

That certain quartz lode mining claim, patented, known as the ALICE Lode claim, being survey No. Four Hundred and Sixty-six (466), in Section one (1) and Twelve (12) Township Three (3) North, Range Eight (8) West, of the Principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNA CHARTA lode claim, being survey No. Four Hundred and Eighty-three (483), in Sections six (6), seven (7), One (1) and Twelve (12), Township three (3) North, Ranges seven (7) and Eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the CURRY lode claim, being sur-

vey No. Six Hundred and Seventy-four (674), in section Twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the VALDEMERE lode claim, being survey No. Four Hundred and sixty-seven (467), in sections six (6) and seven (7), Township three (3) North, Range seven (7) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the ROONEY lode claim, being survey No. Nine Hundred and forty-seven (947), in sections one (1) and twelve (12), Township three (3) North, Range eight West of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the HAWKEYE lode claim, being survey No. Nine Hundred and forty-eight (948), in section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the REEF FRACTION lode claim, being survey No. Fourteen Hundred and thirty-five (1435), in sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MAGNOLIA lode claim, being survey No. Ten Hundred and sixty-two (1062), in section twelve, Township three (3) North, Range

eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BOSTON lode claim, being survey No. Ten Hundred and sixty-six, in section six (6), Township three (3) North, Range seven (7) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented known as the PLOVER NO. 1, lode claim, being survey No. Eight Hundred and five (805), in section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the SAUKIE WEST lode mining claim, being survey No. eight hundred and fifty-seven (857), in section No. One (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the SAUKIE EAST lode claim, being survey No. Eight Hundred and Ten (810), in Sections one (1) and six (6), Township three (3) North, Ranges seven (7) and eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RISING STAR lode claim, being survey No. Five Hundred and Sixty-one (561), in Section No. Twelve (12), Township No. three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain millsite, patented, known as the Alice Mill Site, being survey No. Six Hundred and seventy-four, in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the MIDNIGHT lode claim, being survey No. Six Hundred and Seventy-six (676), in Section (12), Township three (3) North, Range eight (8) West of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WALKERVILLE lode claim, being survey No. Nine Hundred and fifty (950), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided three-fourths ($\frac{3}{4}$) interest in and to that certain quartz lode mining claim, patented, known as the PAY MASTER lode claim, being survey No. Eleven Hundred and Eighty (1180), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the RAY WALKER lode claim, being survey No. Seventeen Hundred and seventy-six (1776), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the WOOD YARD lode claim, be-

ing survey No. Nineteen Hundred and Sixty-nine (1969), in Section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the GUSSETT lode claim, being survey No. Fifteen Hundred and twenty-eight (1528), in Section one (1), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the BLUE WING lode claim, being survey No. Six Hundred and seventy-five (675), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also that certain quartz lode mining claim, patented, known as the NEPTUNE lode claim, being survey No. Fifteen hundred and sixty-two (1562), in Section twelve (12), Township three (3) North, Range eight (8) West, of the principal Meridian for Montana.

Also an undivided six-forty-eights (6-48) interest in and to that certain quartz lode mining claim, patented, known as the THESUS lode claim, being survey No. Seventeen Hundred and Forty-six (1746), in Section six (6), Township three (3), North, Ranges Seven (7) and eight (8) West, of the principal Meridian for Montana.

Also Lots seven (7), eight (8), nine (9), ten (10), Eleven, (11), Twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17),

in Block four (4), Lots three (3), four (4), six (6), seven (7) and eight (8) in Block five (5), and Lots two (2), three (3) and four (4) in Block six (6), all in the North Walkerville Addition to the City of Walkerville, according to the plat and survey of said addition on file in the office of the Clerk and Recorder of Silver Bow County, Montana.

Also Lots thirteen (13), fourteen (14), fifteen (15) and sixteen (16), in Block thirteen (13); all that pr. portion of Lots Seventeen (17), described as follows: Forty (40) feet deep on North end, and sixty (60) feet by eight (8) feet wide on West end of Lot seventeen (17) of Block thirteen (13.)

Also the North forty (40) feet of Lots eighteen (18) and nineteen (19) in Block thirteen (13).

Also that portion of Lot thirteen (13) in Block Sixteen (16), being twenty (20) feet on the South end, and eighty (80) feet by four (4) feet wide on the West end of Lot three (3) in Block sixteen (16).

Lots four (4), five (5), and six (6) in Block sixteen (16), and that portion being Eighty-two (82) feet deep, extending the full length of the lot, by five (5) feet wide of the east portion of Lot sixteen (16) in Block sixteen (16), and Lots seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four and twenty-five, in Block sixteen (16); Lots eleven (11) and twelve (12) in Block seventeen (17); Lots four (4), five (5), six (6), seven (7), eight (8), eleven (11), twelve (12),

thirteen (13), fourteen (14), fifteen (15), sixteen (16) and seventeen (17), in Block eighteen (18), Lots sixteen (16), seventeen (17) and eighteen (18) in Block Nineteen (19), all being in the West Walkerville Addition to the City of Walkerville, Silver Bow County, Montana, according to the official plat and survey of said West Walkerville Addition, on file in the office of the County Clerk and Recorder of Silver County, Montana.

Said party of the first part does also sell, assign, convey, transfer and set over to the said second party all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, smelters, reduction works, refining works, and all other works, machinery, tools, and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also all water and water rights, reservoir and reservoir rights, pipes, flumes, ditches, aqueducts and other water works, and rights of way therefor, timber, timber rights, lands, easements, and other real estate, improved and unimproved, to the first party belonging, or wherever situate, lying or being; together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also all right, title and interest whatsoever, legal or equitable, of the first party, of, in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture supplies, equipment, stock on hand, business, good will, and other property whatsoever and wherever.

Also all stock and shares of stock of or in other incorporated companies, to the said first party belonging, or in or to which it is in any way entitled, whether issued or not issued, and whether standing in or to be issued to or in the name of the said first party, or of any person or persons whomsoever, in trust for it, or for its use or benefit, either express or implied.

Also all bills receivable, accounts, moneys on hand, moneys due or to become due, by reason of any past sales or transactions; also all ores, minerals and metals, which have been or which are mined, in transit or in course of treatment and reduction; all matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining, and all precipitates and argentiiferous mud ready to be melted or parted.

Also, any and all other properties, real, personal and mixed, corporeal and incorporeal, legal and equitable, choses in action and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested, or entitled to become interested.

And not in limitation of the foregoing, but in extension thereof, there is hereby sold and transferred, all, each and every property and property right, of any kind, character and description,

which the said first party is now or may hereafter become entitled to by virtue of any past transaction; also all contracts of every kind and description.

Said first party does hereby also grant to said second party the right to inspect, examine and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of the said first party; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, and the reversion and reversions, remainder and remainders, income, rents, issues and profits thereof.

TO HAVE AND TO HOLD all of the foregoing described property rights, privileges and appurtenances and to the said party of the second part, and to its successors and assigns forever.

The foregoing sale and transfer is made subject to the following conditions:

(a) The said second party agrees to take over, and does hereby take over, the said business and property of the said first party as a going concern; said sale and transfer to be made as of, and take effect from, the last hour of the 31st day of March, A. D. 1910; and to carry out and fully perform and discharge all contracts, obligations, and liabilities, of every kind, character and description, either in contract or in tort, and whether now or hereafter enforceable against the said party, and to undertake to and fully carry out and completely per-

form all valid executory provisions of any contract or contracts which may exist at the date of the transfer and delivery of all the property and assets of the said first party to the said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements, heretofore granted, made or given by the said first party, or its predecessors in interest, and also to all vested rights obtained by others against the said first party, or its predecessors in interest, by legal proceedings or by adverse possession or user.

IN WITNESS WHEREOF, the party of the first part has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, and attested by its Secretary; and the second party has caused its corporate name to be hereunto signed by its President, and its corporate seal to be hereunto affixed, and attested by its Secretary, the day and year in this instrument first above written.

ALICE GOLD & SILVER MINING CO.

By JOHN D. RYAN,

[Corporate Seal]

Its President.

Attest:

J. W. ALLEN,

Its Secretary.

ANACONDA COPPER MINING CO.

By B. B. THAYER,

[Corporate Seal]

Its President.

Attest:

C. F. KELLEY, Its Secretary.

State of New York,
County of New York, ss.

On this 1st day of June, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold and Silver Mining Company, the corporation that executed the within instrument, and acknowledged to me that said corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,
Notary Public for the State of New York residing
at New York City.

My commission expires, March 30, 1911.

State of New York,
County of New York, ss.

On this 31st day of May, in the year 1910, before me, Henry Michaelis, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to me to be the president of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day

and year in this certificate first above written.

HENRY MICHAELIS,

Notary Public for the State of New York.

Residing at New York City.

My commission expires March 30, 1912.

Filed for record June 24th, A. D. 1910 at 45 Min.
past 10 o'clock A. M.

M. KERR BEADLE,

County Recorder.

By ED FITZPATRICK,

Deputy.

State of Montana, County of Silver Bow, ss.

I, M. KERR BEADLE, County Clerk and Recorder of said County, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page 75 in Book 98 of Deed Records of Silver Bow County, Montana.

Attest my hand and the seal of said Silver Bow County, hereunto affixed this 27th day of Dec. 1911.

M. KERR BEADLE,

County Clerk and Recorder.

By ED FITZPATRICK,

Deputy.

Thereupon pursuant to said agreement between counsel, the testimony of Messrs. Evans, Maroney, Goodale and Buzzo, given on the hearing on the application for a provisional injunction, was read in the record as follows:

[Testimony of L. O Evans, for Complainants.]

L. O. EVANS duly called and sworn as a witness

on behalf of the complainants, testified in substance as follows:

My name is L. O. Evans. I reside in Butte and practice law there. I am one of the attorneys for the Anaconda Copper Mining Company, having acted in that capacity since 1901. Prior to that time I was one of the attorneys for the Butte & Boston Consolidated Company. My name is mentioned in the proceedings here in connection with the name of D. Gay Stivers, who generally is one of the counsel of the Anaconda Company and the others. Capt. Stivers has been associated with the company longer than I. Mr. C. F. Kelley is chief counsel and vice-president of the Anaconda Company. Mr. Kelley has been with the company a little longer than I. He came to the Anaconda Company while I was still with the Boston companies. I do not know that Mr. Roy Alley sustains any official relation with the Anaconda Company. He is Mr. John D. Ryan's private secretary. I believe he is an attorney. I think he has worked for Mr. Ryan since 1904. Mr. E. S. Ferry, likewise, associated in these proxies, is a member of the firm of Richards, Richards & Ferry. He is the junior member of a firm of attorneys of Salt Lake. In the minutes of the proceedings of the stockholders meeting of May 8, 1911, his name is associated with mine as holding proxies for a large number of shares of stock at that meeting. I came to be associated with him in holding these proxies because the proxies were sent out by Mr. Allen, the secretary and treasurer of the Alice

Company, whose office is in New York. I am quite sure that the proxies came in the name of Mr. Ferry and myself. At one meeting, Mr. Stivers was unable to go and he was substituted, but the proxies came in this form from the secretary of company in New York. I think that it was Mr. Stivers who went from our office and attended the meeting of May 27, 1910, at which a transfer was authorized. I know Mr. Kelley did not go. He was in New York. I think Mr. Stivers was substituted. As regards who looked after the matter of the making of the transfer for the Anaconda Company why we all acted for both companies in connection with that—that is, preparing the deed. I think I prepared the deed in Butte after the meeting. I did not, however, go to Salt Lake. As to about how many shares Capt. Stivers represented by proxies held by him at that time I cannot tell you, but practically all of the stock except what you represented here appeared in all the meetings; that is to say, we carried proxies at that time for practically all of the stockholders excepting those represented here by you. I do not think there was a change in the holding of stocks from the time I attended and the time Capt. Stivers was there, but any way we held at that time proxies sufficient to carry the resolution and transfer, and knew that, as a matter of course, before Mr. Stivers went down. The proxies all came in the regular way—the same way they do in any matter of that kind. At the time the transfer was authorized—May 27, 1910—the directors were Mr. Ryan, Mr. Thornton, Mr.

Carson, Mr. Allen and Mr. Ferry. There has been a single change in the board of directors since then I think. Mr. Ryan was the president of the company at the time of the transfer and prior to that time, during the time the negotiations were going on which looked to the ultimate making of the transfer. I never got any salary directly from the Alice Company. I attended to some little matters for the Alice Company. I get one check from the companies associated with the Amalgamated Mining Company. My understanding is that all the companies contribute to that, but I do not know even just in what way they do—that is the amounts. The business of the Red Metal Company has been taken care of in my office since the Coalition Company was formed and began operations there, and we have had very little connection in our office with the Alice. There has been very little until this transfer. Richards, Richards & Ferry are their counsel, and they charge fees directly to the Alice Company. Mr. Howard Buzzo was a local man I have always known in connection with the business affairs of the Alice Company. In speaking about the Amalgamated Companies, I referred to the companies in which the Amalgamated is interested as a stockholder—the Boston and Montana Consolidated Copper & Silver Mining Company, Butte & Boston Consolidated Copper & Silver Mining Company, the Washoe Copper Company, the Colorado Smelting & Mining Company originally, succeeded by the Trenton Mining & Development Com-

pany. I think those are all the mining companies, and then they are interested in the Diamond Coal & Coke Company through others. As to the Hennessy Mercantile Company, originally, I think they had a small interest in the Hennessy Company, but I think that was taken over by Mr. Hennessy. We never regarded the Hennessy Company as one of the companies we had anything to do with. They may have had some stock when it was first formed, but it was taken out by Mr. Hennessy. As to the date when the Amalgamated first acquired any stock in these companies, my answer would be purely hear-say. The first I ever heard of the Amalgamated Copper Company was in 1899. Shortly after that time, at least the main part of the legal business of all these companies was transacted from our offices, but it was kept distinct in some ways. We never did until quite recently do away entirely with the line of demarkation in the different companies. We all acted interchangeably for all of the Amalgamated Companies and their legal business was all transacted in our offices, and that has been the condition of things since 1901. I cannot tell you who the directors of the Anaconda Company are. Mr. B. B. Thayer was the first president of the company. I understand Mr. Kelley is a director now and vice-president. Mr. John D. Ryan is president of the Amalgamated Company. The Coalition Mining Company was a stockholding company, holding a majority of the Alice Company and all of the Red Metal Mining Company, and

then I think it had some other interests. These companies were formed about 1906 after the purchase of the Heinze properties. The names of some of the corporations that operated the Heinze properties are the Montana Ore Purchasing Company, the Corra-Rock Island Mining Company, the Minnie Healy Mining Company and the Hypocaea Mining Company. These corporations were engaged in the copper mining business ostensibly. The Montana Ore Purchasing Company did some smelting. There was litigation between the Heinze companies and the Anaconda companies. That litigation was somewhat historical and it was a very bitter and protracted controversy. I spoke of the Red Metal Company, the Butte Coalition Company and the North Butte Company as the Cole-Ryan Companies. They are generally so designated. The Ryan whose name is thus associated is the same Mr. Ryan who is president of the Amalgamated and the president of the Alice. Since the transfer was thus made from the Heinze Company to the Red Metal Company, we have represented the Red Metal Company, as attorneys, Business was done in the same office as the business of the Anaconda Company and these other companies. I do not know of the Butte Coalition maintaining an office in Butte. Since that time I know of no litigation between the Red Metal and any of the companies designated as the Amalgamated Companies. The Red Metal seems to have got along quite harmoniously with the Amalgamated companies. I do not know of any liti-

gation and the same attorneys represented these companies since that time. At the time I went down to Salt Lake to attend this meeting, the minutes of the proceedings of which we have here, I was acting under instructions, of course, I think either from Mr. C. F. Kelley or from Mr. Allen. Mr. Kelley was in the East at that time. He was my superior, and whatever I did there, I did in carrying out the instructions thus received. I do not know that Mr. Allen, the secretary-treasurer of the Alice Company, gave any specific directions, but I knew in some way that it was the desire of the stockholders who sent those proxies to have it voted that way. I cannot tell you how I got it. I knew in some way the proxies came from Mr. Allen, the secretary; that Mr. Allen sent them either to Butte or Salt Lake, but whether he notified me how to act, or whether Mr. Kelley did, or in some other way, of course, I knew that was their purpose and desire—the stockholders who sent those proxies to be voted in that way. It is my understanding that the Butte Coalition owns a majority of the stock. I never had any direct knowledge of the Coalition at all. That was my understanding that the Coalition did own that majority. You see there had been no connection, the same way with the Amalgamated. There was no occasion for that coming up at all. The mining companies are operated in Butte, and I had a general understanding and rumor and everything about it, just as you have. The pay for such work as I do for the Red Metal Company

comes in the same way as for such work as I have done for the Alice Company. I did get one check from the Red Metal Company. My check now comes from the Anaconda Company since it acquired all these properties. I work on a monthly salary, of course, and am not paid by the piece of any piece work. The Anaconda Company has recently acquired the following properties of other companies: The Boston-Montana, Butte & Boston, Parrot, Washoe, Trenton, Red Metal, Alice and the Big Blackfoot. These transfers were made from those companies in April, May and June, 1910. As regards whether the same process has been gone through of the dissolution of these companies, the Boston-Montana has been dissolved, to my knowledge, in Butte. The Butte & Boston is a New York corporation. The Red Metal was a New York corporation. The Trenton is a New Jersey corporation, and whatever proceedings were had in those were taken East. The consideration for the transfer in each of these instances was stock in the Anaconda Company, and its assumption of liabilities, debts and things of that character. To accomplish these purposes, the stock of the Anaconda Company was increased from twelve hundred thousand shares at a par value each to one hundred and fifty-five millions. The Anaconda Company has, likewise, acquired certain of the Clark properties, viz, a portion of the property of the Colusa-Parrot Company, and the Original Consolidated, I think, was the last. The transfer took effect the last day of May or in

June, 1910, just about the same time these other properties were acquired, only these proceedings were under way long before that. It came to my attention considerably after that. The culmination in the deeds occurred about the same time. These Clark companies were engaged in mining mainly, copper ores, and in smelting.

Cross Examination.

The Alice Company has not had any litigation since my connection with it. As to whether it was carrying on or conducting any operations—there are a few leases up there. I do not think it would amount to anything at all. During the time of my connection with it, all that was necessary to look after was the mere matter of holding occasional stockholders' meetings, and I think they got into a dispute over a surface right there—a squatter there once or twice. I know the Alice was not operated. I have been over the ground and know they were not doing anything of any moment.

(Witness Excused.)

[Testimony of John G. Maroney, for Complainants.]

JOHN G. MARONY, duly called and sworn as a witness on behalf of complainants, testified in substance as follows:

My name is John G. Marony, and I am now living in Butte. From June, 1911, until a few weeks ago when I sent in my resignation, I was a director of the Amalgamated Company. I think the board consisted of seven members. Some of the other

members are Mr. Ben Thayer, Mr. William Rockefeller and Mr. Rodgers. Mr. John D. Ryan is president of the company and has been since the death of Mr. H. H. Rodgers about two years ago, I think. I think Mr. Ryan went on the board of directors of the Amalgamated about 1906. This company, as I understand it, is a holding company, engaged in holding the stock of copper mining companies and smelting companies. The capital stock is about one hundred and fifty-five millions as I remember it, most of these companies being in Montana. I understand that they own the principal part of the stock of the Anaconda Copper Company, and prior to the absorption of these other properties by the Anaconda Company, they held stock in the Butte & Boston, the Boston & Montana, the Washoe, the Parrot and I think the Red Metal. I do not know whether they owned the stock of the Butte Coalition. It is my impression that the Coalition owned all the stock of the Red Metal. That is merely my impression, and it is also my impression that the Red Metal owned stock in the Butte Coalition, but I do not know the proportion. I know, of course, that I am being asked as one of the directors of that company, and perhaps, I had better tell you something on that score. I was elected a director of the Amalgamated in June of this year. I resigned either in November or December. I have never seen any balance sheet of the Amalgamated Copper Company, except the general balance sheets that were published last June at their annual meeting. I have

never attended a meeting of the directors of the Amalgamated Company, so my information is not very extensive as to details. The offices of the Amalgamated are at 42 Broadway, New York City. The office of the Anaconda Company is on the same floor of the 42 Building. A great number of copper companies have that floor—the Green, the Green-Cannaea and Butte Coalition. I do not know if the Alice Company has an office on that floor.

Q. I notice, Mr. Marony, and I hand it to you for the purpose of refreshing your recollection, that Mr. Allen sends an envelope enclosing a proxy in which the office is referred to as at 42 Broadway, New York. Does that aid you in advising you now as to whether their office is there or is not there?

A. No, I know Mr. Allen's office is at 42 Broadway, and I know what room, but if it is the office of the Alice Company—I do not know if their name is on the door. Mr. Allen's office is in the same building and on that same floor.

The Green-Cannaea is generally denominated and spoken of as one of the Cole-Ryan properties. Prior to my election as a director of the Amalgamated Company, I should say I sustained no relation to that company or to any of the companies whose stock it held. I had no official connection in the transaction of the business of any of these companies. I have never been an employe, or received a dollar in salary from the Amalgamated Company or any of its constituent companies, so

I have only been a volunteer. I have been president of the Daly Bank & Trust Company. I haven't been drawing any salary from them for sometime—they got cold sometime ago. I occasionally had a part, advisory or otherwise, in these companies for many years, going back to Mr. Daly's time. I had been a stockholder more or less all the time in the Amalgamated and am now. Mr. Ryan was made managing director in 1904. I sometimes received suggestions in regard to the business or operations of these companies from various people connected with the concerns, including Mr. Ryan, whom I always looked upon as the boss of the works. I should say the actual operations in Butte had been conducted under his immediate direction since he became managing director in 1904. It is true that as the president of the bank there, I kept myself fairly well informed of the production of the camp and these various companies from time to time. I cannot give you any idea of the total production of copper in the United States in 1899. In round figures the total production of copper in the United States in 1910, I should say was about one million three hundred thousand pounds—hold on, the production of copper in the world for the year 1910 was about two million pounds. Now, the production of the United States was about one billion two hundred million pounds, I think. Of that I would say the Butte camp produced two hundred and thirty millions. The Engineering and Mining Journal gives the Butte production for 1910 as two

hundred and thirty-eight millions. I would say that is substantially correct. The only other company producing copper in Butte that I can recall offhand is the East Butte running the Pittsmount smelter, no, pardon me, the Tuolomne is quite a producer. I do not know whether this Ballaklava has got around to making copper or not. The zinc, the Butte & Superior makes copper and the Clark mines were shut down because of a fire. As to the proportion contributed by these concerns, the East Butte might produce ten or fifteen million pounds a year and the Tuolomne, I think, about the same.

(By THE COURT):

What do the figures show as the relative proportion of the production of copper in Butte toward the total production of copper of the United States?

(By MR. WALSH):

A billion, eighty-six million in the United States—two hundred and eighty-eight million in Butte.

About one-fourth. So far as my information will enable me to speak regarding companies outside of Montana, which are a part of the Amalgamated, I do not know of any unless it be the International Smelting Company, and they have no producing mines that I know of. They are engaged in smelting and refining in the State of Utah. They have a big refinery—I do not know—may be they sold that. Part of the Butte copper goes to the refinery at Raridan, New Jersey.

Some of the Boston-Montana copper used to go to Dollar Bay, a Michigan refinery. It goes there from the smelters—the Washoe smelter, so-called at Anaconda, and the Boston-Montana, so-called, at Great Falls. The Pittsmont is another copper smelter out on the flat east of Butte and operating now. Mention has been made of the acquisition of the Clark properties. The acquisition of these properties by the Anaconda Company was completed in the month of May or June, 1910. The Butte Reduction Works was a Clark smelter connected with the operation of these properties. The company leased that smelter to Mr. Clark and it burned up; that is, at least a substantial part of the works was destroyed a few months ago. After the transfer, Mr. Clark was using the concentrator only for the reduction of ores from the Elm Orlu and the Bover. I think the principal production was zinc, I do not know. There was a copper smelter in connection with the Heinze properties prior to the acquisition of them by the Red Metal located below his mines on the Butte hill. I think that principally fell to pieces. At the present time there is no smelter operating in Butte except the Pittsmont, and no other in Montana except the Washoe at Anaconda and the B. & M. at Great Falls, and the products of these smelters go to the refinery at Raridan or at Dollar Bay, Michigan. That course has been pursued for a long time. They undertook to run a refinery at Anaconda, but it was expensive. I think it was abandoned

even in Mr. Daly's time, and the ores then, most of them, went to Baltimore, that is, the products of most of these ores were refined in the East and all of these companies contributed the product of their ores to these two smelters that I spoke of. I remember some of their companies' copper went West directly from the B. & M. Works. They had quite a sale for copper in China a few years ago in the form that it comes from the concerns. After being thus refined in the smelters in the East it is sold wherever they can sell it. The copper business has not been very good. I hope it is improving a little. As I understand it, the copper produced by the Butte mines is sold by the United Metals Selling Company, a copper selling institution. There are three or four such in the United States, and I think nearly all the copper goes through the hands of one of these selling agencies, unless it is the copper of Dodge's properties. I think they sell that directly. Recently Mr. Ryan was president of the United Metals Selling Company, prior to that time, I think Mr. Brady. I think they sell between four hundred and five hundred million pounds of copper annually. It goes from the refinery to the purchasers throughout the country through directions from the selling company who accounts to its employers personally.

Cross-Examination.

I do not want to be understood as testifying

that the Amalgamated now or at any time held any of the Red Metal stock.

(By MR. WALSH):

We agree that all of the Red Metal stock is owned by the Butte Coalition.

(By MR. KELLEY):

It was. It is not now.

Regarding my impression that some of the Butte Coalition Company is owned by the Amalgamated—I remember in a vague way—I was in New York about the time Butte Coalition was formed, and there was some talk as to whether or not the Amalgamated would go in. I remember having some conversation with Mr. Ryan on the subject, and really I don't know whether they went in or not. I rather think perhaps they did not. I do not know but what somebody else took the stock they were going to take. The organization of the Butte Coalition Company was absolutely separate and distinct from the Amalgamated Copper Company, and as a matter of fact, the Amalgamated Company had absolutely nothing to do with the Butte Coalition Company at the time of its organization, and as far as I know the Amalgamated Copper Company has had absolutely nothing to do with the Butte Coalition Company since its organization. My understanding is that the Amalgamated did have a very small holding. As to whether the Amalgamated Company has ever been in a position to and has ever directed the properties of the Coalition Company or any of its subsidiary companies—in general in

so far as I know of the operations of the Coalition Company in Butte in the direction of affairs, much of it came from Mr. Tom Cole for a long time, who is the president of the North Butte Company, and I am not sure but that he used to be the president of the Coalition. He had much to do with the acquisition and purchase of the Butte Coalition. With my attention directed to the time when the Heinze property was sold, as I remember it, the properties were sold and the negotiations carried on in New York, and Mr. Cole is the man who dealt with him. I was not present. That is my idea. Mr. Cole has never been either an officer or director of the Amalgamated. He is the Mr. Cole I mentioned in connection with Mr. Ryan. So far as I know, the Butte Coalition properties, and its subsidiary companies have not been managed, directed or controlled by the Amalgamated, although I think Mr. Ryan has had a good deal to say about their affairs and business. The North Butte, which is entirely separate and independent from the Amalgamated, is a comparatively large copper producer. I do not wish to be understood as testifying that the Amalgamated was a stockholder in the International. I had that impression; that is all. I recall the old Heinze—the M. O. P. smelter. When I came to Butte the smelter was in bad physical condition and antiquated, and I understand by reputation and hearsay, that its inefficiency was the reason for its abandonment. Operations of the Butte Reduction Works was suspended because the smelter

was antiquated and inefficient—and business reasons. The ore was transported to the Butte Reduction Works from the Clark properties by hauling it on a trolley line and teams. I knew the location of the Gagnon, Stewart and Original mines. Prior to the time these properties were bought, the Butte, Anaconda & Pacific Railway Company operating between Butte and Anaconda had tracks in the vicinity of these mines. Ores from these mines are now transported by this railroad. It is cheaper to ship these ores to Anaconda for smelting at the Washoe plant than to transport them to the old reduction works for treatment there, because of the difference in efficiency. My answer concerning the amount of copper sold by the United Metals Selling Company was based merely on general reputation. There are three or four metal selling agencies in the United States. The Phelps-Dodge are the only institutions, as I understand, that sell their own copper. The reason for a metal selling agency is that it is almost necessary to have a large amount of copper at your disposal, have it at different places in the world, have it marketable and ready for delivery. The metals selling agency sells at the point of delivery. I would say it is necessary to have an organization that can be kept in constant touch with the conditions that affect the price of copper all over the world. It would be impractical and very difficult for independent or separate producers to maintain such agencies.

Redirect Examination.

Mr. Ryan and Mr. Cole dealt with Mr. Heinze, as I understand it, in the negotiations which led up to the sale of the Heinze properties. I think that Mr. Ryan and Mr. Cole organized the Red Metal Company and the Butte Coalition Company for the purpose of taking over those properties. When the properties were first taken over, I remember Mr. Cole had his North Butte man take charge of the properties, and he run them a considerable time and in recent years, they have been practically under the direction of Mr. Ryan, who has been in closer touch with them than Mr. Cole. I think Mr. Ryan has in recent years directed the affairs of the Butte Coalition and the Red Metal Company in Butte, and the same way with the North Butte Company—Mr. Cole has not been in Butte for a long time. I think a year ago last summer Mr. Cole was there since that time I think Mr. Cole and his associate, Mr. Caton, have been directing the affairs of the North Butte Company. I really do not know whether Mr. Ryan is associated with that company in that way. I do not recall if the North Butte has a New York office. I recall no litigation of any character between the North Butte Company and the Amalgamated since the time of its organization, nor with any of these Amalgamated Companies. I have an impression they had some arguments about ore bodies and some settlements, but it did not become so acute as to get into court. I do not know of any litigation with any other company operating in Butte

for the last five years since the end of the Heinze troubles except there was threatened litigation of some sort or talk of troubles or dispute of the Clark properties. I do not remember any suit, and I remember only this Ballaklava case. Well, I think the Tuolomne and the Amalgamated were in litigation with the North Butte and the Anaconda with the Ballaklava. That is the one I have just mentioned. I do not know of any litigation between the Anaconda and James Murray. The Butte Coalition, as I knew it, was run as a separate, independent company, the most of the stock being held by individuals scattered all over the country. I should think that right today in Butte there is held there fifty or sixty thousand shares of Coalition. I was a large holder in Coalition myself. Whether or not the Amalgamated has in the intervening years acquired or bought a lot of the stock, I do not know. As to the Heinze smelter, of course, it bore no comparison, either in extent or in equipment with either the Washoe or the Great Falls smelters. It seemed to have served Heinze's purpose as long as he was engaged in mining in Butte. The product of his mines went to that smelter, and the same way with Senator Clark—his Butte reduction works seemed to answer his purposes. I do not remember of Mr. Clark sending his ores to any of these smelters or to the Pittsmont. My understanding about the matter is that copper is sold at the point of delivery by the brokerage house selling it for the company or on its account, that has it to offer, but

really I do not know where the point of delivery is. Much copper is sold in London and much on the Continent. There has been much export of copper of late, and I should fancy that all of these selling agencies would have to have copper bought ready for delivery.

Q. And, of course, all over the United States?

A. Well, as a matter of fact in a sense, yes, along the seaboard particularly.

Recross Examination.

After the formation of the Butte Coalition, and with reference to its local manager at Butte, Mr. Cole superintended it from the North Butte. Mr. Arthur Carson had not been for a long time prior thereto connected in any way with the Amalgamated Copper Company or any of its subsidiary companies. In the early days he used to do work for Mr. Daly personally. The management of the Butte Coalition locally in Butte may have been, and probably is yet, distinct and independent from the management of the Amalgamated or any of its subsidiary companies, but I simply say that it is my impression that Mr. Ryan would have much to do with the policy of the company and his suggestions certainly would have great weight, and I won't say that Mr. Ryan undertook the direction of the local management.

Q. I understand that you mean, and all that you mean by your testimony is that Mr. Ryan as a large stockholder and possibly an officer—

A. He might be a director—I do not know.

Q. His influence and suggestions would have weight?

A. Yes, sir. His policy had, of course,—and his suggestions of course, had weight.

I know of no Amalgamated litigation with the Tuolomne Company, nor with the Butte & Superior Company or the East Butte Company, nor litigation in recent years with any of the Clark properties, nor with the North Butte Company nor the Davis-Daly Company.

Redirect Examination.

There was some litigation in the early days between the Clark companies and the Anaconda. That was the case of the Colusa-Parrot against the Anaconda. That is, the title as I remember it. It seems to me it was in 1898. Mr. Clark's smelter was becoming antiquated, and I think that had much to do with moving him to settle. The Davis-Daly Company that I mentioned is a producing company. I understand that they had had ore in commercial quantities at the Colorado. That is the reputation. Judging from what copper is selling at, I would hardly say it is in the prospecting stage. They claimed to have commercial ore bodies, and they undertook to get the Basin Reduction works in condition to get ready to handle it. They haven't been handling enough to pay any dividends. The amount is so insignificant that I could not give an idea in pounds or tons. It is not of much consequence; that would be my guess.

(WITNESS EXCUSED.)

[Testimony of C. W. Goodale, for Complainants.]

C. W. GOODALE, a witness duly called and sworn on behalf of the complainants, testified as follows:

My name is C. W. Goodale and I live in Butte. I am manager of the Boston-Montana department of the Anaconda Copper Mining Company. I was associated with the Boston-Montana Company sometime prior to its dissolution. I went with that company in March, 1898, I believe, and continued with it up to the present time. I began as superintendent of the smelter at Great Falls in 1898. Three and one-half years I held that position, and then I came to Butte as assistant manager and afterwards as manager. In those early years, 1898 and 1899, we got ores from the Boston-Montana mine at Butte for the Great Falls smelter. I do not think we got any from the Butte & Boston. They had a smelter of their own in Butte. In 1898, there was a smelter there belonging to Mr. Heinze. I think it was the Montana Ore Purchasing Company, and the Butte & Boston, I think we have already mentioned. The Colorado Smelting & Refining Company's plant. The Butte Reduction Works, and I believe the Parrot smelter was also opened in 1898. The Butte & Boston smelter took care of the ores of that corporation. There was ^{some} work done by the Colorado Smelter and Refining Company for Mr. Heinze—some concentrating. The Parrot treated its own ores. The Butte Reduction Works had a custom business that treated ores from the mines

belonging to Mr. Clark's group. There was no association between these various groups of companies in 1898. I think in 1898 the product—of these various corporations was handled by the officers of the Butte & Montana Company—by the treasurer. That was the headquarters of the company at that time. My recollection is that the chief parties in the managing and direction of its affairs in the Boston at that time were Mr. A. S. Bigelow, president, and Mr. Nelson or Mr. Ladd, treasurer, I do not remember which. I do not recall whether the product of the Great Falls smelter was shipped at that time. It was shipped according to the orders of the Boston office. The Boston-Montana Company has had an electric refiner ever since 1903, and a portion of its product was refined there and made into wire bar ready to be sold to the trade immediately. I do not recall whether in 1898 they were able to refine all their converted copper or whether some of it went East. I am sure some of it went East as converted copper. I think it was along about 1900 or 1901 that we first began to sell through the selling company, but still I could not say about that. In regard to the Boston-Montana product, I wish to say that I think the United Metal Selling Company was originally organized by the Lewisohns, and they were closely associated with the Boston & Montana. I think that prior to that time the product was handled by the Lewisohns, and I think they organized the selling company, but I do not know about the other companies. I think Mr. Clark

had refining works in the East. My impression is that the Parrot Company sent some of their product to Bridgeport, Connecticut. I know that after the sale of the Heinze properties, that Heinze had a contract with the Nichols Chemical Company and the Boston & Montana took over that contract, and shipped to the Nichols Chemical Company. They are in New York somewhere. I think the Parrot smelter stopped in 1899 or possibly 1900, and the Butte & Boston Company probably about 1901 or 1902. The Heinze smelter discontinued in 1906, the Colorado Company about that time, perhaps, 1905, I do not remember, the Clark smelter sometime in 1910. The copper smelters that are operating in the state at the present time are the Washoe plant at Anaconda, the Boston-Montana plant at Great Falls, and the Pittsmont at Butte. At the Great Falls smelter, we take the ores from the old group that was formerly in the possession of the Boston-Montana Company, and we have ores from some of the other Butte copper mines. I do not recall just what ones they are. Our annual output before the transfer to the Anaconda Company was about ninety million pounds a year. I have had nothing whatever to do with the Washoe smelter at Anaconda, but have kept advised, in a general way of operations there. Whenever there is anything of importance that might be used to advantage of Great Falls, I have endeavored to keep track of developments, consulting with them, as a matter of course, about the improvements and

operations of the two plants. I think that the "Mineral Industry" is recognized authority. The production of copper in the United States in 1899 is given in it at five hundred eighty-one million, three hundred and nineteen pounds. The production of the Anaconda Company for 1899 is given at one million pounds. I cannot tell you if that is correct. It gives the production of the Boston-Montana in 1899 at seventy million pounds. That is in accordance with my recollection. I have the complete series of this Mineral Industry, of course, by the editor of the Mining and Engineering Journal, but I cannot verify it. It is a regular work found in the library of mining engineers, I think, very likely, and I presume that they generally refer to it for information on the mineral industry. It is printed and circulated and I have it in my library. I generally refer to it for general information upon these subjects. I have found some errors in it. The Engineering & Mining Journal is a recognized journal in my profession. I presume it is generally taken by men in my business and resorted to by them for information in their profession.

(By MR. WALSH):

We offer, if the court please, simply the table showing the production for 1896, '97, '98 and '99, found on page 159, down to and including total domestic production, 581,319,091 pounds, and the table given at page 164 for the same period.

(By MR. KELLEY):

That is from 1898 to when?

(By MR. WALSH):

1893 to 1899, giving the production of the Anaconda, Boston and Montana, Butte and Boston, Butte Reduction Works, Montana Ore Purchasing Company, and others, 237,958,951 pounds. Page 254, copper production in Montana.

(By MR. WALSH):

We offer the production for 1909 and 1910, appearing at page 7 of the Mining and Engineering Journal for January 7, 1911.

(By MR. KELLEY):

We object to that, if the court please. I do not think that even purports to be correct. I think the table itself will disclose that it is purely an estimate.

(By THE COURT):

You might let it go in subject to a correction when we get the government reports.

(By MR. WALSH):

This shows the total production for 1910 of 1,086,151,430 pounds, of which 288,449,425 is for Montana.

(The table of production of copper referred to is as follows, to-wit:)

PRODUCTION OF COPPER IN THE UNITED STATES.

(In Pounds.)

State.	1909	1910
Alaska	4,057,142	5,450,000
Arizona	292,042,829	297,081,605
California	53,357,451	45,141,043
Colorado	10,487,940	8,867,401

Idaho	7,770,010	5,317,039
Michigan	227,247,998	219,000,000
Montana	313,838,203	288,449,425
Nevada	51,835,309	63,788,000
New Mexico	5,134,506	5,700,000
Utah	100,438,543	127,906,115
Wyoming	89,654	200,000
Southern States and		
East	22,837,962	17,639,356
Other States	3,746,895	2,176,446

Totals.....1,105,336,326 1,086,151,430

In addition, there are what is generally known as the Amalgamated Company, the Pittsmont Company which is now producing copper in Butte. They call it the East Butte now, I believe. My understanding is that the production of that company last year was about twelve and a half million pounds. I am talking about 1911, making some estimate for the month of December. It was put down about twelve and a half million pounds, and the North Butte was estimated at about thirty million pounds, and besides that is the Tuolomne. I don't know what that production is.

(By THE COURT):

How much from the North Butte.

A. I understood about thirty million pounds. The production of the Tuolomne must be nearly ten million pounds for 1911. That is only my impression. The production is given as 3,750,000 pounds in 1910, but it was quite active in 1911.

I have become generally familiar with the mining claims in the Butte camp. Complainants' Exhibit No. 1 looks like a map of the district, a district map that seems to have been gotten out by Mr. William Walsh, the state mine inspector, certified to by him. It has the appearance of being a copy of the district map. It would take a pretty careful examination for me to verify that. I am familiar with the Badger State claim. From very early years that has belonged to the Boston and Montana Company. It was certainly before my connection with the company in 1898. The Badger State lies with reference to the area in Butte camp that was noted chiefly for copper in the year 1898 somewhat to the north and west. The Anaconda and St. Lawrence are about south of the Badger State, about one-half or three quarters of a mile distant. The great producers of 1898 and 1899 were the Anaconda and the St. Lawrence, the Mountain View, the Pennsylvania, the High Ore, Diamond, Gray Rock, Bell, the Wild Bull. The claims that were in the neighborhood of the Badger State that were producing copper at that time—well, the Gem mine produced copper ores, I think, at that time. That lies southeast of the Badger State. That was not worked to any great extent at that time but it produced ore, but I don't know as it would be enough to be a very great shipper at the time. At that time the great copper producing field of Butte was considerably south and to the east of the Badger State. Since that time the cop-

per producing area has been extended to the northwards, but I don't think very much to the west. That has been the tendency for the last ten years. The explorations have been to the north of the original well known copper district and also to the East. The Pittsmont Company is on the east. The mineral produced in the Gem all showed copper. My recollection is that the Edith May and the Jessie contain copper ore. They were not big producers in 1898 and 1899. They were all working in a comparatively small way at that time, but bearing no comparison in the amount of equipment and perfection of equipment that obtained, for instance, in the Pennsylvania or Anaconda. I believe the geological survey of 1896 made the Speculator vein the most northerly of the copper bearing veins, but I do not think they were right about it, because I know the Gem has produced copper ores. I do not think the limit really has been found to the north, because the Butte and Superior has now been opened to a considerable depth and does not produce copper at all. It produces zinc, and that is still to the north. We first commenced sinking our shafts on the Badger State on extensive scales there about two years ago, possibly three. We have established a very complete and perfect hoist there. The Badger State is not as well equipped as the Leonard and Pennsylvania claims. I have not any figures with me, and I do not know what the output of the Badger State was last year, perhaps, sixty thousand tons of ore, which would av-

erage about three and one-half per cent. copper. I would not call it a great producer yet as compared with some of the others. There are two systems there, an east and west system, and then a northeast and southwest system. I could not say which is the greater, because they have not really been opened up extensively enough to say one is better than the other. I haven't traced it to the surface outside of the Boston and Montana properties. I know of one vein that is found in the Jessie that comes out of the Badger State. In fact, the Jessie's sixteen hundred foot level ran over into the Badger State line. I have never had anything to do with the Red Metal Mining Company or its properties. We have received some ore from it at the works at Great Falls.

Cross Examination.

My recollection is that the United Metals Selling Company was organized by Lewisohn Brothers who had theretofore been prominently identified with the Boston and Montana affairs, and prior to the organization of the United Metals Selling Company there was a concern known as the Lewisohn Broths. a corporation. I recall that that corporation acted as a selling agent for the Boston and Montana Company and other corporations. I think there was an association by that name before it was formed into the selling company, so that in fact I do not think that the method of handling the product after it came from the refinery through a copper brokerage concern was in fact changed by handling it through the United Metals

Selling Company. I stated that Mr. Clark sent his copper direct to a refinery in New Jersey, and I think I mentioned the Waclark. The Waclark plant is only wire drawing metal plant. Mr. Clark, the same as other producers, has his copper ores refined at one of the largest refineries in the East. He formerly shipped some of his matte to Great Falls and it was reduced there. I do not think we have had any ore directly from his mines, but we received large quantities of the matter and converted it. My impression is that the Washoe plant has treated some of the ore from Senator Clark's mines. I am acquainted in a general way with the operations that were carried on at the M. O. P. plant. It was built up from time to time and was not a well arranged plant at all. I should say that it was a fact that a proportionately enormous loss of metal went out of the smoke stack of the Heinze plant. If the Red Metal Company, after its acquisition of the Heinze properties continued to run that smelter. It would have been necessary for them to ship crude ore to Basin, a distance of twenty-five miles and then ship the concentrates back to the M. O. P. smelter at Butte to have them reduced. There would be no question about its being the most economical and business like to ship the crude ore down to the Washoe concentrator and run it into and through the Washoe smelter and reduce it, on account of the difference in the character of the plant and economy in handling. There would likewise be economy in the transportation

charges. There would be no losses of concentrates in the railroad cars. The loss in fine concentrates when they are shipped in railroad cars is a very considerable factor. The Butte and Boston likewise operated a smelter in Butte. My testimony with reference to the condition of the M. O. P. plant is not applicable to the B. & B. plant, because the Butte & Boston plant had its own concentrator.

Q. If, as a matter of fact the saving of approximately a thousand dollars was made and it could be made by shutting down a plant of the character and type of the Butte and Boston plant in Butte and treating the ores in the Washoe plant at Anaconda, would you advise the court that it would be good business to do it?

A. I think so.

The Colorado plant was located in Butte also. I think it was the oldest plant in Butte. It started, I believe in 1879. It had, likewise, become antiquated and obsolete, so far as being a modern and economical plant. At one time I was superintendent of the Gagnon properties, and the ores at one time were reduced at the Colorado smelter, and I have personal knowledge under my own management of that plant. It certainly would be good business from the standpoint of economy and efficiency to ship the ores to the modern plant at Anaconda, because it costs, say, thirty cents to get the ores to the smelter by the street cars, but only ten cents by the Anaconda road, to say nothing of the fact that their plant was old and did not

have modern appliances. Theore from the Gagnon was not a very easy ore to concentrate and treat and it required the most approved appliances to get the best results on account of its finely divided materials. The closing down of these plants in Butte and these operations consolidated at Great Falls and at Anaconda would naturally enable you to work a low grade of ore. The production of copper in pounds has been proportionately increased and the grade of the ores that these companies have been able to treat has been greatly reduced so as to enlarge the tonnage. In other words, by reason of the changes in the place of reducing the ores the economies that have resulted therefrom, it is a fact that ores of much lower grade in copper content and in metal value can now be treated and reduced than could theretofore have been treated in the old plants; so that the transfer of these operations to Anaconda and to Great Falls has let to a great increase in the tonnage of the ore actually mined, but, perhaps, not proportionately as great an increase in the amount of metal extracted from the ores, though the production of metal has been greatly increased in the last ten years. Going back to the period of 1898 prior to the entrance of the Amalgamated Copper Company in the field and comparing the production of the Butte camp at that time with the production at the present time, both as to ore mined and metals obtained, I would say that the production has been increased. I do not regard Stevens Handbook as an authority from a techni-

cal standpoint. My attention was called particularly in connection with this map to the Badger State claim. Now, of course, I know where that is located and have been familiar with it for a great many years. It had been owned by the Boston and Montana Company for a great many years. I think it is comparatively an old location and an old mining claim in Butte. Prior to the development of the North Butte property the farthest north that I knew of any copper was in the Gem lode mining claim. The Gem vein is one of the old east and west veins I think. The copper producing area was supposed, at that time, to be bounded on the north by the Speculator vein, although the claims that lay below the Speculator claim and the Badger State up to the easterly extension of the Rainbow lode, were regarded as copper prospects. I said that this zone had extended northerly in a producing way during the last ten years. I do not know of any extension northerly in the Jessie vein and in the Badger State. That is the sole extension of the copper business in Butte so far as I know. The Alice properties lie northerly and northwesterly of the Badger State. To my knowledge there has never been discovered a vein of copper of any kind or character in any of the Alice properties. I will say in that connection, that I looked at the report of Professor Blake to see if he mentioned occurrences of copper there in 1898, and he did not. I am familiar with the workings in the Badger State. I do not think that the Boston and Mon-

tana Company before the consolidation, or the Anaconda Copper Mining Company since the consolidation, ever have driven a drift, a cross-cut, a working of any kind or character into a foot of the Alice ground. I observe upon this map a line which I assume to be the Jessie vein. It is drawn through the Badger State up into the easterly extension of the Alice property. The Jessie vein comes into the Badger State. It looked very poor when the first work was done from the Jessie into the Badger State. It was discouragingly poor. I do not know of any copper ore in the Badger State in any vein which in my opinion extends into the Alice ground. I have been in the Alice mine, though a great many years ago. The operations of the Alice Company, I think were stopped very soon after the decline in silver in 1893. It is generally understood that as a producing company the Alice stopped in 1893, about eighteen years ago. The depth of the Alice mine proper is about fourteen hundred and fifty or sixty feet. The developments were made in the section of the camp known as the silver district. That district, as far as I know, has never developed into anything but a silver district. The Alice mine was sunk upon the well known Rainbow lode, which is a silver and gold bearing lode. This lode extends in a curve, but in a general way it is easterly and westerly. On the Alice group—on the Rainbow Lode—the Moulton claim on the west was the most important producer. That belonged to Mr. Clark. Then came the Alice, the Magna

Charta and Valdemar, and that was about the easterly extension of the Alice property, as it was worked. I have always supposed that the easterly extension of the Rainbow lode after it left the Alice property was the Valdemar and the Black Rock, worked to a depth of twelve hundred feet. The ore is high in zinc. When the mine stopped in 1893, it was filled with water up to the ten level. In 1905 and 1906 the Alice was under lease to a man named Wiser, and he put in some appliances in the Alice mill for treating zinc ore, and while under his operation in 1906, the mill burned down and the other mill was destroyed after that. Then some years ago the hoisting works burned down. As to whether the Alice Mining Company has been a non-producing property—I know there have been lessors at work in the property, in the upper workings above the water level. These lessors are miners who go into small places and take out ore, and they work places that a corporation could not possibly work and obtain a profit. It is a fact well known to myself as a mining man in Butte that for many years the Alice Mining Company, as a corporation, had not carried on any mining operations, and that its surface plant had been destroyed. I did not know anything about the treasury of the company.

Redirect Examination.

The district of the Alice properties is a district that has this record down to great depth as I should say in the Alice to fourteen hundred feet,

is silver bearing. There has been no discovery of copper in the Badger State. As to whether the region of the Badger State has until recently been spoken of and designated as in the silver district and outside of the copper district, I do not know how it has been characterized, but copper ore has not been found in the Badger State until quite recently. Copper ore was found there at a depth of fourteen hundred feet. There had not been any production of copper down to fourteen hundred feet, that is, no shipment.

Q. And those developments have been comparatively recent. Mr. Goodale, which have demonstrated the value of the Badger State as a copper producing mine?

A. Well, within three years a shaft has been sunk.

Q. Well, when he speaks about the operators as regarding the region as extending from the Colusa on the east and the Anaconda and Parrot mines on the west to the Gagnon?

A. Yes, sir.

Q. That was the old copper producing region?

A. So far as east and west is concerned.

Now, some years later a group of claims known as the Chambers Syndicate was purchased and developed and afterwards became the so called "Northern" properties of the Anaconda Copper Mining Company. I know those claims, the Green Mountain and the Wild Bull. Those were well north of the Anaconda and the Parrot. The

development of those mines was prosecuted with special vigor about 1887 or 1888. There had been a company called the Mountain Consolidated that was operating, but was closed down when I arrived in Butte in 1885. I saw the hoist and works there, and it was not operating then, and later on it was taken over by the so-called Chambers Syndicate, and I think it became an operating mine in 1887 or 1888, possibly a little later. Its properties afterwards passed to either the Anaconda Company or the Washoe. Really they were never operated upon any large or commercial scale until they got into the hands of the Anaconda Company,—the Green Mountain. This Chambers Syndicate never had a smelter. I think that passed into the hands of the Anaconda Company about 1889 or 1890.

Q. So that, as you have regarded it, during all these years the north limit of the so-called copper district was where, Mr. Goodale?

A. Well, the producing limit until ten years ago, I suppose would be considered the Speculator and this group that you mentioned,—the Chambers Syndicate Group, the producing mines.

Until quite recently Main Street was generally supposed to mark the dividing line between the copper district and the silver district. Main Street runs north and south. The Gagnon and the Original are to the west of Main Street. Of course, so far as the transportation of the ores to Basin and back again is concerned, that was simply due to the

fact that the Heinze concentrator had burned down—at least, he commenced shipping to Basin after the burning down. I would guess that it burned down about 1900. So far as that is concerned, that would have been obviated by rebuilding the concentrator. Prior to that time it was not necessary to ship ores over to Basin and back again to Butte. Apparently the Butte and Boston before it passed into the common ownership with the Anaconda and the rest of them was operating its own smelter. I cannot say as to whether or not it was satisfied; at least they did not send their ores to the Washoe smelter at Anaconda. The Colorado Company had some mining properties in Butte.

Q. And it preferred, apparently, to smelt its own ores in its own smelter, rather than send them to Anaconda, although perhaps they could get a little better results by shipping to Anaconda?

A. You must bear in mind the Washoe plant, as rebuilt in modern times, was not started up until 1902. It was not until then that the Anaconda Company could by its better methods make better treatment.

Mr. Clark, I think, apparently seemed content to get along with his old tumble down smelter. I think he did have a desire to send his ores over to Butte for treatment there, but his smelter was running to pretty near its capacity. He made some very extensive improvements in it, only a short time before he sold out. He built a stack there

that must have cost about fifty thousand dollars. He kept on operating all the time. I spoke about Professor Blake's report on the copper district of Butte. He examined the Alice mine somewhere about 1885 and there is a paper he published on the silver mining in Butte. That, I think, was in 1887. Silver was the chief product of the Butte camp in 1885. I am inclined to think that by that time copper was overbalancing the silver in value of product. The Anaconda smelter was put up in 1883 and the Parrot was smelting before that time and also the Colorado and the predecessor in interest of the Boston and Montana had a smelter at Meaderville.

Recross Examination.

The Washoe smelter was completed about February, 1902, and after they had had difficulties in perfecting the plant, and it was about three years later I think that the B. & B. and the Trenton began shipping to Anaconda, and some six or seven years after the Amalgamated Company was formed. The Butte and Bacorn have within the past five or six years done some extensive developing and prospecting for a copper mine north of the Alice properties. They went down one thousand feet; also the North Butte Mountain. The north of the Rainbow lode from its westerly end clear on to its easterly end, the prospecting operations for copper must have been very extensive. I think that some millions of dollars have been spent up there in developing to find a copper mine. I do not

know of any producing copper mine having been found up there. There was never any amount of copper produced north of the Rainbow Group.

Redirect Examination.

The Butte and Bacorn is about a mile away. I do not think it is a mile from where the Rainbow vein comes down the hill. It is about a half a mile. I presume there could be a good deal of copper ore in that half mile. There is some very extensive prospecting north of the Alice,—the Glengarry and the Wabash. I think the depth of the Glengarry is three hundred feet. There is no copper, as a general rule, until you get below three hundred feet.

Re-Cross Examination.

It is my recollection that all of these companies, I imagine, are within half a mile, and some of them join the Alice properties on the north.

Witness Excused.

[Testimony of C. F. Kelley, for Complainants.

C. F. KELLEY, called as a witness on behalf of the complainants, having been first duly sworn, testified as follows:

Direct Examination.

(By MR. WALSH).

THE WITNESS: I am one of the directors of the Anaconda Copper Mining Company, and have been on the board I think since about the 28th day of November last; I am not quite sure that that is the exact date, but approxi-

mately that is correct. I have been familiar with the business of the Company in a general way for some years. At the time of the transfer in question there were present the following directors of the company: B. B. Thayer, John D. Ryan, F. P. Addicks, George H. Church, Urban H. Broughton, H. H. Rogers, Jr., and William Rockefeller. Mr. Thayer was president of the company and still is; Mr. Ryan was formerly president of the company but is now president of the Amalgamated Copper Company. I think Mr. Ryan was not an officer, other than a director of the Anaconda Company at the time of the conveyance in question; I do not think he was vice-president; I think Mr. Addicks was vice-president. I know who the directors of the Butte Coalition were at that time; I doubt if I can name all of them; I can name most of them; they were Mr. Thomas F. Cole, Mr. John D. Ryan, Mr. Thayer, Mr. Thornton, Mr. Foster and Mr. Dickson; I think they constituted the Butte Coalition board. I think Mr. Cole was president of that company at that time; I am not sure whether Mr. Ryan held any position other than that of director; if the Copper Handbook designates him as vice-president that is probably correct; the Copper Handbook is regarded as fairly reliable. I do not think that the Copper Handbook is regarded as an authority except insofar as the corporations—the directors interested in the companies give Mr. Stevens, who compiles the book the directory; I do not know whether it is kept up or not.

Mr. Stevens has for ten years been known as the statistician, particularly as to the production and the supply of copper and copper properties. It is Mr. Steven's custom to send out to copper producing concerns a blank which calls for certain information, and that is given to Mr. Stevens and compiled in the form of a book. I do not think that the book is regarded as an authority in any sense except generally as to the directors of a corporation and its officers, and its character, so far as the companies furnish the information. I either was in New York at the time of the holding of the stockholders' meeting in Salt Lake City on the 29th of May, 1910, or shortly before that. In a general way I recall the proceedings had antedating the action of the board of directors which was taken at this meeting; I think I had charge of the legal proceedings that resulted in these different corporations conveying their property to the Anaconda Copper Mining Company. I was concerned and connected with all of the proceedings and this was simply one of a series. I think I remember who attended the directors' meeting which authorized the calling of the stockholders' meeting. In regard to the parties at New York entering into a contract in relation to the transfer, afterwards culminating in the deed of the properties, the procedure was that the board of directors of the Alice and the board of directors of the Anaconda Copper Mining Company authorized their respective executive officers to enter into a

contract for the sale of the property, the contract to be subject to the ratification of the shareholders of the Alice Company, that being, as we took it, the procedure outlined by the statutes of Utah. In that procedure the Alice Company was represented by Mr. Garver. I will say this, the Butte Coalition Company had employed the firm of Shearman & Sterling and Mr. Garver, a member of that firm was consulted so far as the action was taken by the Butte Coalition Companies were concerned in New York; in Utah, the firm of Richards, Richards & Ferry represented the Alice Company. At the meeting of the directors of the Alice Company referred to, I am not sure whether they were represented by counsel, but the plan had been approved by their counsel, and the minutes, the resolutions of the meetings, of course, had been prepared in advance, except as to the blanks that were necessary that necessarily would be left open. I think it is true that I was the only counsel present, and in addition to that I believe that a member of the directors, I remember at least one of the directors of the Butte Coalition Company obtained the advice and submitted the plan to his own counsel. Mr. Ryan at that time was a common director of both companies.

Cross Examination.

(By MR. CHRISTIAN):

Aside from being a director and vice president of the Anaconda Copper Mining Company, I am

one of the counsel for the Anaconda Copper Mining Company. At the time these proceedings were had I was not an officer of the Anaconda Company or the Alice Company. I am familiar with the holdings of the Amalgamated Copper Company in certain companies; the Amalgamated Copper Company owns fifty thousand shares, or about one-twentieth, in all, of the capital stock of the Butte Coalition Company; the remaining portion of that stock is held by private holders. The Amalgamated Company does not own any stock in the International Smelting & Refining Company; the Amalgamated has no interest in that company as a stockholder. I am familiar with the so-called consolidation proceedings held some time ago between the various companies.

Q. Kindly state the properties of that consolidation.

MR. WALSH: If the court please, I must object to this as cross examination. I have no objection to his putting it in as part of the case of the defendant.

THE COURT: He may answer with that understanding. It is not to be regarded as cross examination.

A. I will state that I am familiar with the consolidation that was perfected by which the Anaconda Company acquired the physical property of the other corporations operating in Butte, or some of them, and I am likewise familiar with the causes which led up to the consolidation of these

different concerns, so far as their physical properties are concerned. I will say that the causes which led up to and resulted in the consolidated were, I think, three, primarily. The first was due to the fact that a part of the mining companies operating in Butte had reached the point where they could no longer produce their ores at a profit; that condition was the result of a necessity of operating separate, independent organizations, running separate plants and hoists, maintaining separate equipment, and making their own individual development to the various ore bodies, owned by these different companies. The result was that the overhead charges were eating up a large part of the profits, and, as I say, with some of the companies it was rather a close proposition, and a close proposition so far as certain territory was concerned. It would be to the best interests of all if a plan or organization could be perfected by which the mining ground that was contiguous to one company or another as the case might be, might be worked without the necessity of each company making its separate individual development. In other words, it seemed like a waste and an unwise expenditure of money to require one concern to equip a surface plant to maintain it separately, to run up to a line and stop at the end of its property, at the end line of its property, whereas its development, its shaft, its crosscuts, its laterals and its surface equipment, were completely adequate to enable that company

to proceed and take out the ore and to require another concern operating the property contiguously to have its separate plant, and its separate development, and run up, say, to the other side and stop, at its line. Now, that was one cause. The second cause, or the reason that led to this consolidation, was the increasing number of underground mining conflicts that could not be equitably and legally adjusted as between these different companies without the expenditure of an enormous amount of money, from which no good could come. In explanation of that I want to say that in certain districts in Butte, the prospecting development had shown a large number of veins that were not profitable or productive near the surface. Now, in order to determine absolutely the ownership of those veins, it would be necessary for the different corporations, owning them separately, to have developed the apex by raising through an absolutely unprofitable portion of the vein to reach the apex, and then opening up the apex, and disclosing it with reference to the exterior boundaries of the different mining companies or claims owned by the different companies. All of that work would have been dead work; it would have cost a large amount of money and as I say, would not have been productive so far as anybody realizing from the actual doing of the work. The third reason that led to the consolidation, was the desire to so consolidate these properties that the very heavy burden, the exploration and development

might be carried on for the joint benefit of all of the different companies. For instance, these properties lay—I am not speaking with reference to the Alice properties, because that was an after thought, I think it had no part in the original consolidation—but often times property lay contiguous, the property of one company was contiguous to the property of another company. Now, it cost a great deal of money to prospect and develop and open up these mining claims, and there was not any fair or equitable way in which that charge could be distributed among the different companies. If the Anaconda Company, for instance, had begun an extensive exploration, and found a vein, although it might have been profitable for the Butte & Boston Company, there was no way of dividing the expense, and it was the different complexities that came about in the operation of these different mining companies as separate units that led to the consolidation of the physical properties. I think that is a fair statement of it.

Re-Direct Examination.

(By MR. WALSH):

I suppose it is true that if one company owned every business in Butte there would be no such thing as controversies. We never had any controversy with the Pittsmont, and we have never really felt that there was any justifiable controversy with the Ballaklava, so far as it was concerned. There was a controversy with Senator Clark which both parties took up in an amicable manner and

endeavored as best they might to adjust. I do not think the Anaconda Company will have any controversy over the ownership of the Clark properties. If there were different companies owning properties in Butte, and the Anaconda Copper Mining Company did some development it would inure to the benefit of some of the other companies, and they could not be made to share, and it is also true that under the conditions prevailing during the last several years, if those companies were all operating separately, as they were at the time you mention, a good many of them would not be operating at all. The Tuolomne Company has been operating there, and if they chose to do some development it might inure to the benefit of our property. The North Butte has very extensive development in that region and has contributed to the Tuolomne's welfare without any charge for it. That state of affairs exists in every mining camp where there are independent operators or development done by one company, but still it results in a great waste to have a great many companies operating on independent development which could be done by one. If twenty different companies operated at Butte, independently the expense would be immeasurably greater than if one company operated all of them, and a good many of them could not be operated at all; they were operating in 1899; at that time the Boston & Montana, the Butte & Boston, the Parrot, the Colorado, the Montana Ore Purchasing Company, the Orig-

inal, Colusa Parrot and possibly a good many more companies were operating. Of course, you will appreciate and understand that each year with the increasing depth of the mines and the very depreciated condition of the metal market during several years last past, the cost has to a great extent increased, and that at the same time the grade of ore perhaps in some of the older veins has likewise diminished so far as metal content is concerned, and it is necessary to carry on exploratory work during the past few years to a greater extent than it was in former years. The economies in operation have necessarily been great in order that operations may be carried on at all. A considerable saving has been effected by the utilization of electric power instead of steam power; electricity for power purposes was first used in 1901, or thereabouts. As to controversies about ore bodies in depth, they would subsist the same way if each of these companies was still pursuing its existence as an independent and competing company, but where there is a common ownership there is no controversy. After the Butte Coalition was formed in 1906, we took up different Heinze properties and the representatives of both sides, each side having its independent engineer, and we attempted as best we could to provide planes which would bound the respective rights of the different companies to different ore bodies, and to that end exchanged, where there were common interests, common interests in cer-

tain properties, reciprocal deeds, but we found upon development being carried further that those planes while they equitably adjusted the rights with reference to the ore bodies we then knew, were not applicable to some we subsequently discovered, and the intention at the time was to fix merely the rights with reference to definite ore bodies and not lease or convey away from one company to the other valuable rights that might thereafter accrue by reason of subsequent developments and discovery. Those agreements were entered into between the Red Metal Company and the companies owning the adjacent properties,—the different companies, and it took out of this controversy the principal features which were in controversy between the Heinze companies and the different Amalgamated Companies. We have from time to time fixed lines with other companies. We fixed boundary lines between the old Speculator claims in settlement of that controversy, and I think we have at times fixed lines between Senator Clark's properties and our properties, the Anaconda properties. We have never had, I think, any controversy with the North Butte. We never have had any actual controversy with the North Butte Company, and we have fixed side lines as to our respective rights in the event of developments on certain veins resulting in certain disclosures.

Witness Excused.

MR. WALSH: If your honor please, I desire to offer in evidence a transcript of the proceedings of the meeting of the stockholders of the Alice Gold and Silver Mining Company, at which the sale in question was authorized.

(Said transcript of the proceedings was received in evidence, marked Plaintiffs' Exhibit 2, and is in the words and figures following):

Plaintiffs' Exhibit 2.

Minutes of a Special Meeting of the Stockholders of the ALICE GOLD & SILVER MINING COMPANY, Held at the principal office of the Company, in the Utah Savings & Trust Company Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D. 1910, at 10 o'clock A. M.

The following named stockholders, owning or representing the number of shares of the capital stock of the Company hereinafter set opposite their respective names, were present in person or by proxy, filed with the Secretary, to-wit:

E. S. Ferry, in person, owning.....	100 shares
Joe Richards, by D. Gay Stivers, proxy.....	300 "
Isabelle McQueeney, by	
Willard Hamer, substitute proxy.....	1,000 "
Lina H. Speer, by Willard	
Hamer, substitute proxy.....	100 "
Henry C. Frank, by F. S.	
Richards, substitute proxy.....	200 "
Charles F. Gibson, by F.	
S. Richards, substitute proxy.....	2,000 "

Adler, Mrs. Caroline,	by E.S. Ferry, proxy	200 shares
Aikman, Mrs. N. Augusta	" " " " "	200 "
Allen, Joseph W.	" " " " "	115,098 "
Allen, Norman F.	" " " " "	33 "
Bach, Anna B. Mrs.	" " " " "	200 "
Benjamin, George C.	" " " " "	100 "
Bogle, John	" " " " "	50 "
Boyd, Miss Margaret C.	" " " " "	100 "
Brown, Charlotte A.	" " " " "	75 "
Brown, Miss Mabel	" " " " "	20 "
Bown, Miss Margaret	" " " " "	20 "
Brown, Mrs. Margaret C.	" " " " "	15 "
Brown, William C. Jr.	" " " " "	20 "
Carroll, Mrs. Julia F.	" " " " "	100 "
Catlin, Ephrom	" " " " "	200 "
Chislett, Wm.	" " " " "	250 "
Clarke, John D.	" " " " "	100 "
Collins, James V.	" " " " "	1,000 "
Collins, W. L.	" " " " "	42 "
Conlon, Patrick	" " " " "	100 "
Curtis, N. M.	" " " " "	500 "
Driscoll, Dennis	" " " " "	200 "
Durston, John H.	" " " " "	500 "
Eames, Elizabeth Miss	" " " " "	200 "
Eising & Co., E.	" " " " "	100 "
Ferns, John	" " " " "	500 "
Fink, J. C.	" " " " "	10 "
Flannigan, Jerry	" " " " "	200 "
Force, Marion Mrs. S.	" " " " "	200 "
Fuller, Miss Rhoda	" " " " "	100 "
Gehrmann, Chas.	" " " " "	50 "

Anaconda Copper Mining Co. et al. 319

Gold, Meyer	by E. S. Ferry, proxy	100 shares
Goldberg, David	" " " " "	100 "
Goodman, Milton F.	" " " " "	300 "
Goodman, Mrs. Sarah	" " " " "	200 "
Graves, S. R.	" " " " "	54 "
Gunniss, Mrs. Annie	" " " " "	200 "
Haight, Edward	" " " " "	100 "
Haley & Co., Caleb	" " " " "	200 "
Hall, Mrs. Ella B.	" " " " "	25 "
Harper, Walter S.	" " " " "	100 "
Harris, Samuel	" " " " "	100 "
Hayes, H. J.	" " " " "	54 "
Heidelsheimer, S.	" " " " "	200 "
Hess, Ferdinand	" " " " "	200 "
Howatson, Robert	" " " " "	25 "
Irvine, E. J.	" " " " "	25 "
Kirkpatrick, James	" " " " "	100 "
Knapp, John A.	" " " " "	400 "
Kringel, Ira C.	" " " " "	200 "
Love, William	" " " " "	100 "
Lukach, Isidor	" " " " "	100 "
Lyons, Michael	" " " " "	100 "
McConihe, A. Douglas	" " " " "	300 "
McCormick, J. E.	" " " " "	500 "
McGovern, James	" " " " "	200 "
McHugh, Thomas	" " " " "	100 "
Mass, Wm.	" " " " "	2,500 "
Macinder & Co., James	" " " " "	200 "
MacMillan, Mrs. Alice R.	" " " " "	1,400 "
Malcom & Coombe	" " " " "	100 "
Muldoom, Mrs. Martha J.	" " " " "	25 "

Morris, Sternbach & Co.	by E. S. Ferry, proxy	300 shares
Newborg & Co.	" " " "	11,925 "
Newton, Mary M.	" " " "	200 "
Oakes, T. F.	" " " "	300 "
Ober, Maurice	" " " "	800 "
Paine, Webber & Co.	" " " "	425 "
Pease, Theodore Dennis	" " " "	66 "
Reimel, Edward	" " " "	400 "
Rhodes, F. B. F.	" " " "	300 "
Robinson, E. George	" " " "	1,600 "
Robinson, Maria Maud	" " " "	1,800 "
Robinson, Mrs. Mary E.	" " " "	176 "
Robinson, Miss Mary Elizabeth	" " " "	1,750 "
Robinson, Nathaniel	" " " "	1,600 "
Ryan, John D.	" " " "	60,656 "
Salverson, Fred	" " " "	75 "
Shearer, Charles T.	" " " "	50 "
Shaley, Mrs. Mina B.	" " " "	200 "
Shores, Arthur J.	" " " "	300 "
Spencer, Chas. D.	" " " "	350 "
Spratt, Thomas	" " " "	100 "
Stokes, Mrs. Ada	" " " "	650 "
Strong, A. C.	" " " "	100 "
Sutro Bros. & Co.	" " " "	200 "
Thornton, W. D.	" " " "	58,161 "
Turner, Mrs. Anna	" " " "	300 "
Turner, Christopher	" " " "	350 "
Valentine, W. S.	" " " "	100 "
Van Sant, O. B.	" " " "	200 "
Wagner, Wm.	" " " "	100 "

Anaconda Copper Mining Co. et al. 321

Weil, Harry S.	by E. S. Ferry, proxy	100 shares
Westheimer, N.	" " " " "	1,200 "
White, Miss Mary	" " " " "	20 "
Whiting, John C.	" " " " "	145 "
Willenberg, Carl	" " " " "	100 "
Wimpfheimer, Chas. A.	" " " " "	1,000 "
Wooster, Mattie V.	" " " " "	100 "
Wynne, W. E.	" " " " "	200 "
Eliassof, Harry N.	" " " " "	500 "
Gibson, Wm. H.	" " " " "	2,400 "
Hungate, Mary	" " " " "	50 "
Keaveny, James	" " " " "	10 "
Lewisohn Bros.	" " " " "	1,300 "
Lorton, Hattie A.	" " " " "	100 "
Mayo, Edwin L.	" " " " "	600 "
Peck, Thomas	" " " " "	500 "
Tingle, Elizabeth	" " " " "	200 "
William Tebbs	" " " " "	100 "
Estate of Armitage		
Rhodes, deceased	" " " " "	142 "
Estate of Colonel Rhodes,		
deceased	" " " " "	333 "
Morris Eisenberg	" " " " "	1,000 "
Rhodes, Mrs. Mabel	" " " " "	7 "
Frances V. Emerson	" " " " "	225 "
Mary E. Hutton	" " " " "	433 "
Ella T. Pearson	" " " " "	50 "
Wm. E. Wallace	" " " " "	50 "
Victor Day	" " " " "	200 "
Joseph S. Baer in person,		
owning		300 "

J. R. Walker in person,		
owning		2,110 "
Peter Geddes by Jos. R.		
Walker, proxy		3,100 "
W. C. Lewis,	by E. S. Ferry, proxy	500 "
H. Hobert Keeler	" " " " "	1,500 "
Alfred Clifford	" " " " "	500 "
		<hr/>
		295,100 "

It appearing that there was represented at the meeting in person or by proxy, stockholders owning or representing a total of 295,100 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than a majority of the entire capital stock of the company, the meeting was duly organized as follows:

On motion duly made and seconded, Mr. E. S. Ferry was nominated and elected Chairman of the meeting, 295,100 shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. Ferry took the chair.

On motion duly made and seconded, Mr. D. Gay Stivers, a suitable person, was elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavits of J. W. Allen, secretary of the Company, Blanche H. Newcomb, clerk of the "Salt Lake Telegram," a daily newspaper published in the city of Salt Lake, Utah, and also by Mr. Joseph F. MacDonald, clerk of the "New York Times," a daily newspaper published

in the City of New York, state of New York, that notice had been duly given by mailing and publication to the stockholders of the company, as required by the by-laws of the corporation.

Said affidavits were exhibited at the meeting, filed with the Secretary, and are respectively in the following form:

State of New York,
County of New York, ss.

J. W. Allen, being first duly sworn, deposes and says: That he is the secretary of the Alice Gold & Silver Mining Company, that acting under and by virtue of a resolution duly adopted by the board of directors of said company at a special meeting of said Board, held at the office of the company, No. 42 Broadway, New York City, New York, on Wednesday, the 27th day of April A. D. 1910, at 12 o'clock M. affiant made out and caused the following notice of said meeting to be deposited in the United States Mail, enclosed in a suitable envelope, with postage prepaid thereon, addressed and directed to each stockholder of record of the above named company, by his name and to his place of residence appearing upon the records of said company.

Affiant further says that acting under said resolution he gave instructions that a similar notice should be published daily for at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, in the

"Salt Lake Telegram," a daily newspaper of general circulation, published at the City of Salt Lake, Salt Lake County, Utah, and also gave instructions that the said notice should be published at least three successive weeks preceding the date of the stockholders' meeting, to-wit: from the 4th day of May, A. D., 1910, to the 27th day of May, A. D., 1910; said notice above referred to being in the following form:

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings and Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M., for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all of the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said

Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) J. W. ALLEN.

Subscribed and sworn to before me, this 19th day of May, A. D., 1910.

HENRY MICHAELIS,

[Notarial Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30, 1912.

State of New York,

County of New York, ss.

JOSEPH F. MACDONALD, being first duly sworn, says: That he is the principal clerk of the "New York Times," a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 4th

day of May, A. D., 1910, up to and including the 27th day of May, A. D., 1910.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May 19th, 1910, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the 27th day of May, A. D., 1910, as follows:

NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF
ALICE GOLD & SILVER MINING COMPANY.

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver
Mining Company:

NOTICE IS HEREBY GIVEN, that a special meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice

Gold & Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) JOSEPH F. MACDONALD.

Subscribed and sworn to before me this 20th day of May, A. D. 1910.

(Signed) HUGH C. PARKER,
[Notarial Seal] Notary Public, Kings Co., Registered in New York Co. 2115.
Notary Public for Kings County,
N. Y., residing at Brooklyn,
N. Y.

My Commission Expires March 30, 1912.

State of Utah,
County of Salt Lake, ss.

BLANCHE H. NEWCOMB, being first duly sworn says: That she is the principal clerk of the "Salt Lake Telegram," a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was

instructed to cause the publication of said notice in the said newspaper daily, beginning on the 5th day of May, A. D. 1910, up to and including the 27th day of May, A. D. 1910.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 5th day of May, A. D., 1910, to the 27th day of May, A. D., 1910, inclusive.

**"NOTICE OF SPECIAL MEETING OF THE
STOCKHOLDERS OF THE
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 2, 1910.

To the Stockholders of the Alice Gold & Silver
Mining Company:

NOTICE IS HEREBY GIVEN, That a special meeting of the stockholders of the Alice Gold & Silver Mining Company, will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, A. D., 1910, at the hour of 10 o'clock A. M. for the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold & Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property and assets of every kind and character owned or possessed by the Alice Gold & Silver Mining Company to the said Ana-

conda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold & Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company, and for the transaction of any other business that may properly come before the meeting.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN,
Secretary."

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 27th day of May, A. D. 1910,

(Signed) H. J. SCHULTZ,
Notary Public for the State of Utah, residing
at Salt Lake City, Utah. My Commission
Expires February 10th, 1914.

[Notarial Seal]

Thereupon the chairman appointed Mr. D. Gay Stivers and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the Secretary, and the said committee, after an examination of said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the Company, representing 295,100 shares of the capital stock of the Company, which said shares of stock, and the owners or representatives thereof, are hereinbefore spread on the minutes of said meeting.

On motion, duly made, seconded and adopted, the report of the committee was accepted.

Thereupon, the said proxies were exhibited to the meeting, and, after examination, were filed by the Secretary in his office.

The Chairman then stated to the meeting the purposes for which the same had been called, and the Secretary read to the meeting the minutes of the Directors' Meeting held on the 27th day of April, A. D. 1910, at the office of the Company, No. 42 Broadway, New York City, New York.

On motion, duly made, seconded and adopted, the said proceedings of the said directors', as the same appeared of record at said meeting, were ratified, approved and confirmed, and made the act of the stockholders of this corporation.

WHEREUPON, the following resolution was introduced:

WHEREAS, at a special meeting of the Board of Directors of this Company, held at the office of the company, 42 Broadway New York City, New York, on Wednesday, the 27th day of April, A. D., 1910, it was decided to call a special meeting of the stockholders of this company on the 27th day of May, A. D., 1910, for the purpose of considering a proposition to ratify, approve and confirm a certain contract which the officers of this corporation were authorized by the Board of Directors to enter into with the officers of the Anaconda Copper Mining Company, providing for a sale, transfer and conveyance of all of the property and assets owned or possessed by this Com-

pany, of every kind and character, real, personal and mixed, corporeal and incorporeal, in law and in equity, for thirty thousand (30,000) shares of the capital stock of the Anaconda Copper Mining Company, said contract of sale to be made subject to the ratification, approval and authorization of the stockholders of this corporation at this meeting, as required by law, and

WHEREAS, acting under and by virtue of the authority so conferred by said resolution, the following agreement and contract of sale has been duly entered into by the officers of this company on behalf of this company with the officers of the Anaconda Copper Mining Company on behalf of the last named corporation; be it

RESOLVED, that the acts of the officers of this corporation in entering into the following agreement and contract of sale, to-wit:

THIS AGREEMENT, made and entered into this 19th day of May, A. D. 1910, between the Alice Gold & Silver Mining Company, a corporation organized under the laws of the State of Utah, hereinafter designated as the "FIRST PARTY," and the ANA-CONDA COPPER MINING COMPANY, a corporation organized under the laws of the State of Montana, hereinafter designated as the "second party" WITNESSETH:

That subject to the conditions and agreements hereinafter set forth, the first party hereby agrees to sell and does hereby sell, for and in consideration of thirty thousand (30,000) shares of the cap-

ital stock of the second party, full paid, at par and non-assessable, to be issued and delivered by the second party to the first party, or to such person or persons as the first party may hereafter designate; and the second party hereby agrees to purchase, and does hereby purchase, upon the conditions aforesaid, all of the mines, mining ground, mining rights, claims and locations, quartz mills, concentrators, reduction works, and all other works, machinery, tools and implements whatsoever, to the first party belonging, and wherever situate, lying or being, and for whatever purpose used, owned or possessed.

Also, all water and water rights, reservoirs and reservoir rights, pipes, flumes, ditches, aqueducts and other works and rights of way therefor.

Also, all lands, easements and other real estate, improved and unimproved, to the first party belonging, and wherever situate, lying or being, together with all and singular all rights and privileges possessed or enjoyed in connection therewith.

Also, all right, title and interest whatsoever, legal or equitable, of the first party, of in and to any and all mines, mining rights, lands, easements or other real estate whatsoever, and wherever situate, lying or being.

Also all works, plants, mills, tramways, machinery, furniture, supplies, equipment, stock on hand, business, good will and other property whatsoever, and wherever situate, lying or being.

Also, all bills receivable, accounts, money on hand, moneys due or to become due by reason of any past sales or transactions, and all ores, minerals and metals which have been mined; all matte, bullion, copper, gold, silver and other metals on hand, in transit or in course of refining; all precipitates, and all argentiferous mud ready to be melted or parted, owned or possessed by said first party.

Also, any and all other properties, real, personal and mixed corporeal and incorporeal, legal and equitable, choses in action, and possession, of every kind, character and description, wherever the same may be situated, belonging to the said first party, or in which the said first party is in any wise interested or entitled to become interested.

Said first party does also give, and grant unto said second party the right to inspect, examine, and at all reasonable times to take copies of all books of account, minutes, records, letters, copies of letters, files, and all other private books, documents and papers whatsoever, of said first party.

The foregoing sale and transfer is made subject to the following conditions:

(a) Said second party agrees to take over, and does hereby take over, the said property of the said first party as of the 30th day of April, 1910, and agrees to carry out and fully perform and discharge all contracts, obligations and liabilities of every kind, character and description, whether in contract or in tort, and whether now or hereafter enforceable against the first party, and to under-

take to and fully carry out and completely perform all valid executory provisions of any contract or contracts which may exist at the date of the transfer and delivery of all of the property and assets of said first party to said second party.

(b) Also, subject to all existing leases, releases, rights of way and other easements heretofore granted, made or given by the said first party or its predecessors in interest, and also to all vested rights obtained by others against said first party or its predecessors in interest by legal proceedings or by adverse possession or user.

(c) All taxes, lien and assessments upon, or any part, of the property sold, or against the first party, whether due and payable, or to become due and payable, shall be paid by said second party hereto.

(d) Said first party agrees to make, execute and deliver through its proper officers, duly authorized, any and all deeds, conveyances or other instruments necessary or proper for carrying out this agreement according to its true intent and meaning and said second party agrees to make, execute and deliver such undertakings, releases, stipulations or other instruments as may be necessary on its part to carry out all of the terms and provisions of this agreement according to its true intent and meaning.

(e) It is expressly understood and agreed that the foregoing contract of sale and transfer is made subject to the confirmation and ratification thereof by the stockholders of the said first party at a

special meeting of said stockholders, called for that purpose to meet at the principal office of the Company in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A. D. 1910, it being the intention of this agreement to sell and convey all of the property and assets specified in this contract, subject only to the conditions herein expressed and the said ratification and confirmation of said contract by the said stockholders of said first party.

IN WITNESS WHEREOF, the parties hereto have caused their corporate names to be hereunto signed by their respective Presidents, and their corporate seals to be hereunto affixed, and attested by their respective Secretaries, the day and year in this instrument first above written.

(Signed)

ALICE GOLD & SILVER MINING CO.,

[Seal] By JOHN D. RYAN, Its President.

Attest:

J. W. ALLEN, Its Secretary.

ANACONDA COPPER MINING CO.,

[Seal] By B. B. THAYER,
Its President.

Attest:

C. F. KELLEY,

Its Secretary.

State of New York,

County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said

County and State, personally appeared John D. Ryan, known to me to be the President of the Alice Gold and Silver Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

[Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30th, 1911.

State of New York,
County of New York, ss.

On this 19th day of May, in the year 1910, before me, M. E. Bryans, a Notary Public in and for said County and State, personally appeared B. B. Thayer, known to me to be the President of the Anaconda Copper Mining Company, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

M. E. BRYANS,

[Seal] Notary Public for the State of New York, residing at New York City, N. Y.

My commission expires March 30, 1911.

be, and the same are hereby, in all respects ratified, approved, confirmed and made the acts of this corporation; and be it further

RESOLVED, that the foregoing agreement and contract of sale is in all of its terms, stipulations, provisions and agreements hereby ratified, approved, confirmed and made the act and deed of this corporation, and that the Board of Directors and the proper officers of this corporation be, and they are hereby authorized, empowered and directed to do and perform each and every act necessary and requisite to fully carry out and make effective the provisions and intent of this resolution and agreement and contract of sale, in accordance with law, so as to fully and completely divest this company of all right, or claim of right, title, or claim of title, in or to all or any of the above specified property, and to pass all and every right, title and interest of this company in and to said property to the said Anaconda Copper Mining Company, upon the payment by said Anaconda Copper Mining Company to the credit of this company, of thirty thousand (30,000) shares of the capital stock of the said Anaconda Copper Mining Company; and be it further

RESOLVED, that the officers of this company be, and they are hereby, authorized, empowered and directed to make, execute, acknowledge and deliver such deeds of conveyance, assignments, transfers, stipulations or other instruments as may be necessary to fully and completely carry out the

provisions and purposes of said agreement and contract of sale.

On motion duly made and seconded that the said resolution be adopted, the following stockholders voted in favor of said resolution:

E. S. Ferry, in person, owning	100 shares
Joe Richards, by D. Gay Stivers, proxy	300 "
Isabelle McQueeney, by Willard Hamer, substitute proxy	1,000 "
Lina H. Spear, by Willard Hamer, substitute proxy	100 "
Henry C. Frank, by F. S. Richards, substitute proxy	200 "
Charles F. Gibson, by F. S. Richards, substitute proxy	2,000 "
Adler, Mrs. Caroline, by E. S. Ferry, proxy	200 "
Alkman, Mrs. N. Augusta " " " " "	200 "
Allen, Joseph W. " " " " "	115,098 "
Allen, Norman F. " " " " "	33 "
Bach, Anna B., Mrs. " " " " "	200 "
Benjamin, George C. " " " " "	100 "
Bogle, John, " " " " "	50 "
Boyd, Miss Margaret C. " " " " "	100 "
Brown, Charlotte A. " " " " "	75 "
Brown, Miss Mabel " " " " "	20 "
Brown, Miss Margaret " " " " "	20 "
Brown, Mrs. Margaret C. " " " " "	15 "
Brown, William C., Jr. " " " " "	20 "
Carroll, Mrs. Julia F. " " " " "	100 "
Catlin, Ephrom " " " " "	200 "
Chislett, Wm. " " " " "	250 "
Clarke, John D. " " " " "	100 "

Anaconda Copper Mining Co. et al. 339

Collins, James V.	by E. S. Ferry, proxy	1,000 shares
Collins, W. L.	" " " " "	42 "
Conlon, Patrick	" " " " "	100 "
Curtis, N. M.	" " " " "	500 "
Driscoll, Dennis	" " " " "	200 "
Durston, John H.	" " " " "	500 "
Eames, Elizabeth Miss	" " " " "	200 "
Eising & Co., E.	" " " " "	100 "
Ferns, John	" " " " "	500 "
Fink, J. C.	" " " " "	10 "
Flannigan, Jerry	" " " " "	200 "
Force, Marion Mr. S.	" " " " "	200 "
Fuller, Miss Rohda	" " " " "	100 "
Gehrmann, Chas.	" " " " "	50 "
Gold, Meyer	" " " " "	100 "
Goldberg, David	" " " " "	100 "
Goodman, Milton F.	" " " " "	300 "
Goodman, Mrs. Sarah	" " " " "	200 "
Graves, S. R.	" " " " "	54 "
Gunniss, Mrs. Annie	" " " " "	200 "
Haight, Edward	" " " " "	100 "
Haley & Co., Caleb	" " " " "	200 "
Hall, Mrs. Ella B.	" " " " "	25 "
Harper, Walter S.	" " " " "	100 "
Harris, Samuel	" " " " "	100 "
Hayes, H. J.	" " " " "	54 "
Heidelsheimer, S.	" " " " "	200 "
Hess, Ferdinand	" " " " "	200 "
Howatson, Robert	" " " " "	25 "
Irvine, E. J.	" " " " "	25 "
Kirkpatrick, James	" " " " "	100 "
Knapp, John A.	" " " " "	400 "

Kringel, Ira C.	by E. S. Ferry, proxy	200 shares
Love, William	" " " " "	100 "
Lukac, Isider	" " " " "	100 "
Lyons, Michael	" " " " "	100 "
McConihe, A. Douglas	" " " " "	300 "
McCormick, J. E.	" " " " "	500 "
McGovern, James	" " " " "	200 "
McHugh, Thomas	" " " " "	100 "
Maas, Wm.	" " " " "	2,500 "
Macinder & Co., James	" " " " "	200 "
MacMillan, Mrs. Alice R.	" " " " "	1,400 "
Malcom & Coombe	" " " " "	100 "
Muldoon, Mrs. Martha J.	" " " " "	25 "
Morris, Sternbach & Co.	" " " " "	300 "
Newberg & Co.	" " " " "	11,925 "
Newton, Mary M.	" " " " "	200 "
Oakes, T. F.	" " " " "	300 "
Ober Maurice	" " " " "	800 "
Paine, Webber & Co.	" " " " "	425 "
Pease, Theodore Dennis	" " " " "	66 "
Reimel, Edward	" " " " "	400 "
Rhodes, F. B. F.	" " " " "	300 "
Robinson, E. George	" " " " "	1,600 "
Robinson, Maria Maud	" " " " "	1,800 "
Robinson, Mrs. Mary E.	" " " " "	176 "
Robinson, Miss Mary Elizabeth	" " " " "	1,750 "
Robinson, Nathaniel	" " " " "	1,600 "
Ryan, John D	" " " " "	60,656 "
Salvesen, Fred	" " " " "	75 "
Sherrer, Chas. T.	" " " " "	50 "
Shaley, Mrs. Mina B.	" " " " "	200 "

Anaconda Copper Mining Co. et al. 341

Shores, Arthur J.	by E. S. Ferry, proxy	300 shares
Spencer, Charles D.	" " " " "	350 "
Spratt, Thomas	" " " " "	100 "
Stokes, Mrs. Ada	" " " " "	650 "
Strong, A. C.	" " " " "	100 "
Sutro Bros. & Co.	" " " " "	200 "
Thornton, W. D.	" " " " "	58,161 "
Turner, Mrs. Anna	" " " " "	300 "
Turner, Christopher	" " " " "	350 "
Valentine, W. S.	" " " " "	100 "
Van Sant, O. B.	" " " " "	200 "
Wagner, Wm.	" " " " "	100 "
Weil, Harry S.	" " " " "	100 "
Westheimer, N.	" " " " "	1,200 "
White, Miss Mary	" " " " "	20 "
Whiting, John C.	" " " " "	145 "
Willenberg, Carl	" " " " "	100 "
Wimpfheimer, Chas. A.	" " " " "	1,000 "
Wooster, Mattie V.	" " " " "	100 "
Wynne, W. E.	" " " " "	200 "
Eliassof, Harry N.	" " " " "	500 "
Gibson, Wm. H.	" " " " "	2,400 "
Hungate, Mary	" " " " "	50 "
Keaveny, James	" " " " "	10 "
Lewisohn Bros.	" " " " "	1,300 "
Lorton, Hattie A.	" " " " "	100 "
Mayo, Edwin L.	" " " " "	600 "
Peck, Thomas	" " " " "	500 "
Tingle, Elizabeth	" " " " "	200 "
William Tebbs	" " " " "	100 "
Estate of Armitage Rhodes, deceased	" " " " "	142 "

Estate of Colonel Rhodes,

deceased	by E. S. Ferry, proxy	333 shares
Morris Eisenberg	" " " " "	1,000 "
Rhodes, Mrs. Mable	" " " " "	7 "
Frances V. Emerson	" " " " "	225 "
Mary E. Hutton	" " " " "	433 "
Ella T. Pearson	" " " " "	50 "
Wm. E. Wallace	" " " " "	50 "
Victor Day	" " " " "	200 "
W. C. Lewis	" " " " "	500 "
H. Hobert Keeler	" " " " "	1,500 "
Alfred Clifford	" " " " "	500 "

And the following stockholders voted against said resolution:

Joseph S. Baer, in person owning	300 shares
J. R. Walker, in person, owning	2,110 "
Peter Geddes, by Jos. R. Walker, proxy	3,100 "

It appearing that of the entire capital stock represented at said meeting, 289,590 shares have been voted in favor of said resolution, and the same constituting more than a majority of all of the issued capital stock of the corporation, the said resolution was declared duly carried by the chairman, and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and adopted, said meeting was adjourned.

(Signed) E. S. FERRY,

Chairman.

(Signed) D. GAY STIVERS,

Secretary.

State of Utah,
County of Salt Lake, ss.

E. S. FERRY, being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

(Signed) E. S. FERRY.

Subscribed and sworn to before me, this 27th day of May, 1910.

HARVEY J. JONES,

Notary Public, in and for Salt Lake County, State of Utah, residing at Salt Lake City in said County and State.

My commission expires Jan. 12, 1912.

State of Utah,
County of Salt Lake, ss.

On this 27th day of May, A. D. 1910, before me, Harvey J. Jones, a Notary Public in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of Special Meet-

ing of the stockholders of the Alice Gold & Silver Mining Company, as chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

[Notarial Seal] HARVEY J. JONES,
Notary Public for the State of Utah, Residing at
Salt Lake City, Utah. My commission expires
March 8, 1912.

State of Utah,
County of Salt Lake, ss.

D. Gay Stivers, being first duly sworn, says upon oath: That he is the person who acted as secretary of the special meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on the 27th day of May, A. D. 1910; that the foregoing is a copy of the minutes of the proceedings, had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid; and that the said minutes, show truly and completely all of the proceedings had at the said meeting.

D. GAY STIVERS.

Subscribed and sworn to before me, this 27th day of May, A. D. 1910.

[Notarial Seal] HARVEY J. JONES,

Notary Public for the State of Utah, Residing at
Salt Lake City, Utah. My commission expires
March 8, 1912.

State of Utah,
County of Salt Lake, ss.

On this 27th day of May, A. D. 1910, before me,
Willard Hamer, a Notary Public in and for said
County and State, personally appeared D. Gay
Stivers, known to me to be the person whose name
is subscribed to the foregoing minutes of the spe-
cial meeting of the stockholders of the Alice Gold
& Silver Mining Company, as Secretary thereof,
and also to the foregoing affidavit, and acknowl-
edged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto
subscribed my name and affixed my Notarial
Seal, the day and year in this certificate first above
written.

[Notarial Seal]

WILLIAM HAMER,

Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My commission expires May 16, 1913.

We, the undersigned, stockholders, and proxies
and representatives of stockholders of the Alice
Gold & Silver Mining Company, present at the spe-
cial meeting of the stockholders of said company,
held on the 27th day of May, A. D. 1910, hereinbe-
fore recorded, do hereby certify that the forego-
ing minutes of the said meeting are full, true and
correct; and we and each of us did at such meet-
ing, and hereby do, concur in each and all of the

resolutions, and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this 27th day of May, A. D. 1910, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

E. S. Ferry	100 shares
D. S. Ferry, proxy	285,890 shares
F. S. Richards, proxy	2,200 shares
Willard Hamer, proxy	1,100 shares
D. Gay Stivers proxy	300 shares

State of Montana,

County of Silver, Bow, ss.

I hereby certify that the within instrument was ~~filed~~ in my office on the 31st-day of May, A. D. 1910, at 30 min. past 9 o'clock A. M.

Attest my hand:

M. KERR BEADLE, County Recorder.

By J. P. ROSSITER, Deputy.

Filed for record May 31st, A. D. 1910, at 30 min. past 9 o'clock A. M.

M. KERR BEADLE, County Recorder.

By J. P. ROSSITER, Deputy.

State of Montana,

County of Silver, Bow, ss.

I, M. KERR BEADLE, County Clerk and Recorder of said County do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page 264, in Book "E" Miscellaneous Records, of Silver Bow County, Montana.

Attest my hand and the seal of said Silver Bow County, hereunto affixed this 2nd day of January, 1912.

[Seal]

M. KERR BEADLE,
County Clerk and Recorder.

By.....

Deputy.

By MR. WALSH: I also offer in evidence the minutes of the proceedings of the meeting at which the dissolution of the Alice Company was authorized.

(The said offer was admitted and the minutes of the proceedings were received in evidence marked plaintiffs' Exhibit 3 and are in the words and figures following, to-wit:)

~~ALL RIGHTS RESERVED~~

~~1904-722-7000-202~~

Plaintiff's Exhibit 3.

MINUTES of a SPECIAL MEETING of the STOCKHOLDERS of the ALICE GOLD & SILVER MINING COMPANY, held at the principal office of said Company in the Utah Savings & Trust Company Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D. 1911, at 10:00 o'clock a. m.

The following named stockholders, owning the number of shares of the capital stock of the company hereinafter set opposite their respective names, were present in person or represented through proxies filed with the secretary, to-wit:

E. S. Ferry, in person.

F. S. Bascom by E. S. Ferry and L. O. Evans, proxies

Anna Kate Adams by E. S. Ferry and L. O. Evans, proxies

Edith Adams	"	"	"
John A. Knapp	"	"	"
Edwin G. Wooley	"	"	"
Caroline Adler	"	"	"
C. R. Agnew	"	"	"
Joseph W. Allen	"	"	"
Anna B. Bach	"	"	"
Simon Bank	"	"	"
Barnes Brothers	"	"	"
Helen Beebe	"	"	"
E. H. Bennett (Est)	"	"	"
Maier Berliner	"	"	"
Emily C. Berthet	"	"	"
Kate M. Blindhauer	"	"	"
John Boyle	"	"	"
Meyer Gold	"	"	"
Corinne I. Clarke	"	"	"
Victor Day	"	"	"
John Boyle	"	"	"
Margaret C. Boyed	"	"	"
Charlotte A. Brown	"	"	"
Ernest W. Brown	"	"	"
Mabel Brown	"	"	"
Margaret Brown	"	"	"
Margaret C. Brown	"	"	"
William C. Brown, Jr.	"	"	"
Charles A. Buttrick	"	"	"
Ephrem Catlin	"	"	"
Stephen W. Carey	"	"	"
William Chislett	"	"	"

Anaconda Copper Mining Co. et al. 349

John D. Clarke	by E. S. Ferry and L. O. Evans, proxies		
Juliette F. Clarke	"	"	"
Alfred Clifford	"	"	"
W. L. Collins	"	"	"
Patrick Conlon	"	"	"
John J. Connley	"	"	"
H. M. Curtis, (Est.)	"	"	"
The Daniel Investment Co.	"	"	"
William Henry Dennis	"	"	"
John Douglas	"	"	"
Dennis Driscoll	"	"	"
Emanuel Eising	"	"	"
Rhoda Fuller	"	"	"
Harry N. Eliassop	"	"	"
Charles Gehrman	"	"	"
Stanley Gifford	"	"	"
David Goldberg	"	"	"
Milton F. Goodman	"	"	"
S. R. Graves	"	"	"
Annie E. Gunniss	"	"	"
Edward Haight	"	"	"
Ella B. Hall	"	"	"
W. L. Harpet	"	"	"
Samuel Harris	"	"	"
H. J. Hayes	"	"	"
S. Heidenheimer	"	"	"
Ferdinand Hess	"	"	"
A. J. Huneke	"	"	"
H. Hobart Keeler	"	"	"
James Kirkpatrick	"	"	"
Walter C. Lewis	"	"	"

Lewisohn Brothers by E. S. Ferry and L. O. Evans, proxies

W. F. Love	"	"	"
W. S. Lowry	"	"	"
Michael Lyons	"	"	"
A. D. McConishe	"	"	"
Thomas McHugh	"	"	"
Alice R. MacMillan	"	"	"
Morris Sternbach & Co.	"	"	"
Newberg & Company	"	"	"
Thomas F. Oakes	"	"	"
Peine Webber & Company	"	"	"
Mary Packer	"	"	"
Ada Phipps	"	"	"
Chas. N. Pollak	"	"	"
Edward Reimel	"	"	"
F. B. F. Rhodes	"	"	"
Mabel Rhodes	"	"	"
Francis T. Robinson	"	"	"
Frederick A. Robinson	"	"	"
Maria M. Robinson	"	"	"
Mary E. Robinson	"	"	"
Mary Elizabeth Robinson	"	"	"
Nathaniel Robinson	"	"	"
John D. Ryan	"	"	"
C. T. Shearer	"	"	"
Charles D. Spencer	"	"	"
Thomas Spencer	"	"	"
Frank Stevens (Estate of)	"	"	"
A. C. Strong	"	"	"
W. D. Thornton	"	"	"
Elizabeth Tingle	"	"	"

Anaconda Copper Mining Co. et al. 351

Anna Turner	by E. S. Ferry and L. O. Evans, proxies		
Christopher Turner	"	"	"
W. J. Valentine	"	"	"
William Wagner	"	"	"
Werner & Brown	"	"	"
Sarah W. West	"	"	"
Nathan Westheimer	"	"	"
Mary White	"	"	"
Carl Willenborg	"	"	"
Chas. A. Wimpfheimer	"	"	"
Mattie V. Wooster	"	"	"
Annie D. Young	"	"	"
John List Crawford	"	"	"
James Brennan	"	"	"
Pat Conlon	"	"	"
E. I. Irvine	"	"	"
Caleb Haley & Company	"	"	"
J. J. Flanigan	"	"	"
L. M. Rumsey	"	"	"
Samuel Stein	"	"	"
Mina B. Sheley	"	"	"
Maurice Ober	"	"	"
Henry C. Frank	"	"	"
P. Kunz, Jr.	"	"	"
I. W. Lukach	"	"	"
William Haas	"	"	"
Frederick Nussbaum	"	"	"
E. C. Westervelt	"	"	"
O. B. Van San	"	"	"
A. J. Shores	"	"	"
J. R. Walker, in person.			

Peter Geddes by J. R. Walker, proxy.

Eugene Blum by W. J. Barrett, proxy.

Isaac Blum " "

Edward Blum " "

Isadore Bear " "

J. S. Bear " "

Alphonso Dryfoos " "

Dryfoos, Blum & Co. " "

Joseph C. Stettheimer " "

Kurzman I. Frankenheimer " "

H. S. Everett " "

Margaret Ann Meehan " "

Harry S. Weik, by E. S. Ferry and L. O. Evans, proxies.

Marco J. Medin " " "

M. S. Largey Willard Hamer

It appeared that there were represented at the meeting, in person or by proper proxies, stockholders owning a total of 310,963 shares, out of the total issued stock of 400,000 shares, and that the same constituted more than two-thirds of the entire capital stock of the company.

The meeting was duly organized as follows:

On motion, duly made and seconded, Mr. E. S. Ferry was nominated and elected chairman of the meeting, shares of the capital stock of the company being cast in favor of such selection; whereupon Mr. E. S. Ferry acted as chairman of the meeting.

On motion, duly made and seconded, Mr. L. O. Evans, a suitable person, was unanimously elected Secretary of the meeting.

The chairman thereupon announced that proof had been made by the affidavit of Mr. J. W. Allen, the secreary of the company; also by the affidavit of Blanche H. Newcomb, the principal clerk of the Salt Lake Tribune, a daily newspaper of general circulation, published in the City of Salt Lake, County of Salt Lake, State of Utah; and by the affidavit of Mr. Joseph F. MacDonald, the principal clerk of the New York Times, a newspaper of general circulation, published in New York City, New York, that notice of the holding of said meeting of the stockholders of said company had been duly given by mailing and publication to the stockholders of the company, as required by law.

Said affidavits were exhibited to the meeting, filed with the Secretary, and are respectively in words and figures as follows, to-wit:

State of New York,
County of New York, ss.

I, the undersigned, J. W. Allen, of Elizabeth, Union County, State of New Jersey, DO HEREBY CERTIFY:

That on April 17, 1911, I caused to be mailed to all stockholders of record on that date a copy of the circular letter attached hereto, and that I also, on April 24, 1911, caused to be mailed to such additional stockholders as of record on that date, a copy of the aforesaid notice.

WITNESS my hand this 1st day of May, 1911.

(Signed) J. W. ALLEN,

Secretary, Alice Gold & Silver Mining Company.

Subscribed and sworn to before me, this 1st day of May, 1911.

(Signed) MORRIS MEYERS,
Notary Public, N. Y. Co.

NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE

ALICE GOLD & SILVER MINING COMPANY.

To the Stockholders of the Alice Gold & Silver
Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold and Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D. 1911, at the hour of 10 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D. 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

State of New York,
County of New York, ss.

JOSEPH F. MacDONALD, being first duly sworn, says: That he is the principal clerk of the New York Times, a newspaper published daily in the City of New York, State of New York; that as such clerk he received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 14th day of April, A. D. 1911, up to and including the 5th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions he received the said notice, and that the said notice has been published daily in the regular issue of said paper up to and including the issue of May first, 1911, and that it is the intention to publish said notice in each daily issue of said paper from and after this date up to and including the fifth day of May, A. D., 1911. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE**

ALICE GOLD & SILVER MINING COMPANY.

New York, N. Y., April 12th, 1911.

To the Stockholders of the Alice Gold & Silver
Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that

a Special Meeting of the stockholders of the Alice Gold and Silver Mining Company will be held at the principal office of the company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday the 21st day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9th day of May, A. D., 1911, at 10 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

(Signed) JOSEPH F. MacDONALD.

Subscribed and sworn to before me, this first day of May, A. D., 1911.

(Signed) HUGH W. PARKER,
Notary Public, for the state of New York, residing
at Brooklyn, New York City.

[Seal] N. Y. My Commission Expires March
30, 1912.

Notary Public, Kings Co. Registered
in New York Co.

State of Utah,
County of Salt Lake.

Blanche H. Newcomb, being first duly sworn, says: That she is the principal clerk of the Salt Lake Tribune, a newspaper published daily in the City of Salt Lake, State of Utah; that as such clerk she received from J. W. Allen, Secretary of the Alice Gold & Silver Mining Company, the notice hereinafter set out, and that affiant was instructed to cause the publication of said notice in the said newspaper daily, beginning on the 15th day of April, A. D., 1911, up to and including the 8th day of May, A. D., 1911.

Affiant further says that pursuant to said instructions she received the said notice, and that the said notice has been published daily in the regular issue of said paper from the 15 day of April, A. D., 1911, to the 8th day of May, A. D., 1911, inclusive. Said notice above referred to, is as follows:

**NOTICE OF SPECIAL MEETING OF STOCK-
HOLDERS OF THE
ALICE GOLD & SILVER MINING COMPANY.**

Salt Lake City, Utah, May 8th, 1911.

To the Stockholders of the Alice Gold & Silver Mining Company:

In accordance with a resolution duly adopted by the Board of Directors of the Alice Gold & Silver Mining Company, notice is hereby given that a Special Meeting of the stockholders of the Alice Gold & Silver Mining Company will be held at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on

Monday, the 8th day of May, A. D., 1911, at the hour of 10:00 o'clock a. m., for the purpose of considering a proposition to dissolve the said corporation, and to wind up and terminate its existence and business affairs, and for the transaction of any other business that may properly come before said meeting.

The stock transfer books of the company will be closed on Friday, the 21 day of April, A. D., 1911, at 3 o'clock p. m., and remain closed until Tuesday, the 9 day of May, A. D., 1911, at 10:00 o'clock a. m.

By order of the Board of Directors of the
ALICE GOLD & SILVER MINING COMPANY,
J. W. ALLEN, Secretary.

(Signed) BLANCHE H. NEWCOMB.

Subscribed and sworn to before me, this 8th day of May, A. D. 1911.

(Signed) WILLARD HAMER,
Notary Public for the State of Utah,
[Seal] residing at Salt Lake City, Utah. My
commission Expires May 16, 1913.

Thereupon, the chairman appointed Mr. L. O. Evans and Mr. Willard Hamer a committee to examine and report upon the number and correctness of the proxies filed with the secretary, and the said committee, after an examination of the said proxies, reported in writing to the meeting that there were filed with the secretary certain proxies of the stockholders of the company, all of which were in regular form, and correct and sat-

isfactory, representing 308,753 shares of the capital stock of the company, which said shares of stock, and the owners or representatives thereof, and the proxies representing the same, are hereinbefore spread upon the minutes of this meeting.

On motion, duly made and seconded and unanimously adopted, the report of the committee was accepted.

Thereupon, the said proxies were accepted and exhibited to the meeting and, after examination, were filed by the secretary in his office.

The chairman then stated to the meeting the purpose for which the same had been called, to-wit, to consider the question of the speedy dissolution of said company, and to vote upon the proposition as to whether the same should be dissolved.

WHEREUPON, the following resolution was duly presented to the meeting:

WHEREAS, all claims and demands against the Alice Gold & Silver Mining Company have been fully satisfied, discharged and paid, and this corporation has disposed of all of its physical properties and business interests; and,

WHEREAS, it is deemed to the best interests of the stockholders of this corporation that the same be dissolved;

NOW, THEREFORE, be it RESOLVED that said corporation, the Alice Gold & Silver Mining Company, be dissolved and that the Board of Directors of said company make application to the District

Court of the Third Judicial District of the State of Utah, in and for the County of Salt Lake, for the dissolution of this corporation, to-wit, the Alice Gold & Silver Mining Company, and take all necessary steps, and do all things necessary and proper under the laws of the State of Utah, to secure the dissolution of this corporation and to cause a proper distribution to be made to the stockholders entitled of all of the assets and property of said corporation.

Upon motion duly made by Mr. L. O. Evans, and seconded by Mr. Willard Hamer, that the said resolution be adopted, the following stock holders voted in favor of said resolution:

Stockholder	No. of shares
E. S. Ferry, in person, owning	100,100
F. S. Bascom, by E.S. Ferry and L. O. Evans, proxies	122
Anna Kate Adams "	25
Edith Adams "	25
John A. Knapp "	400
Edwin G. Woolley, Jr. "	200
Caroline Alder "	200
C. R. Agnew "	200
Joseph W. Allen "	115,098
Anna B. Bach "	200
Simon Bank "	10
Barnes Brothers "	100
Helen L. Beebe "	200
E. H. Bennett (estate) "	200
Maier Berliner "	300
Emily C. Berthet "	1,400

Anaconda Copper Mining Co. et al. 361

Kate M. Blindauer	by E.S.Ferry and L.O.Evans, proxies	25
John Bogle	" " "	50
Meyer Gold	" " "	100
Corinne I. Clarke	" " "	10
Victor Day	" " "	200
Margaret C. Boyed	" " "	100
Charlotte A. Brown	" " "	75
Ernest W. Brown	" " "	3,800
Mabel Brown	" " "	20
Margaret Brown	" " "	20
Margaret C. Brown	" " "	15
William C. Brown, Jr.	" " "	20
Charles Buttrick	" " "	300
Stephen W. Carey	" " "	100
Ephrom Catlin	" " "	200
William Chislett	" " "	250
John D. Clarke	" " "	100
Juliette F. Clarke	" " "	10
Alfred Clifford	" " "	500
W. L. Collins	" " "	42
Patrick Conlon	" " "	100
John J. Conley	" " "	25
N. M. Curtis (estate)	" " "	500
The Daniel Inv. Company	" " "	200
William Henry Dennis	" " "	50
John Douglas	" " "	100
Dennis Driscoll	" " "	200
Emanuel Eising	" " "	100
Rhoda Fuller	" " "	100
Harry N. Eliassop	" " "	500
Charles Gelmann	" " "	50

Stanley Gifford by E.S.Ferry and L.O.Evans, proxies	4,500
David Goldberg	100
Milton F. Goodman	300
S. R. Graves	54
Annie E. Gunnis	200
Edward Haight	100
Ella B. Hall	25
W. L. Harper	100
Samuel Harries	1,000
H. J. Hayes	54
S. Heidesheimer	200
Ferdinand Hess	200
A. J. Hüncke	100
H. Hobart Keeler	1,500
James Kirkpatrick	100
Walter C. Lewis	500
Lewisohn Brothers	1,200
W. F. Love	100
W. S. Owry	100
Michael Lyons	100
A. D. McConishe	300
Thomas McHugh	100
Alice R. MacMillan	1,500
Morris Sternbach & Co.	300
Newberg & Company	13,625
Thomas F. Oakes	300
Paine Webber & Co.	300
Mary Packer	10
Ada Phipps	100
Chas. N. Pollak	1,500
Edward Reimel	400

<i>Anaconda Copper Mining Co. et al.</i>	363
F. B. F. Rhodes by E.S.Ferry and L.O.Evans, proxies	300
Mabel Rhodes	7
Francis T. Robinson	1,600
Frederick A. Robinson	1,600
Maria M. Robinson	1,800
Mary E. Robinson	26
Mary Elizabeth Robinson	1,800
Nathaniel Robinson	1,300
John D. Ryan	60,656
C. T. Shearer	50
Charles D. Spencer	350
Thomas Spencer	100
Frank S. Stevens (estate)	500
A. C. Strong	100
W. D. Thornton	58,161
Elizabeth Tingle	200
Anna Turner	300
Christopher Turner	350
W. J. Valentine	100
William Wagner	100
Werner & Brown	600
Sarah W. West	163
Nathan Westheimer (est.)	900
Mary White	20
Carl Willenberg	100
Chas. A. Wimpfheimer	1,000
Mattie V. Wooster	100
Annie D. Young	100
John List Crawford	2,000
James Brennan	200
Pat. Conlon	100

E. I. Irvine	by E.S.Ferry and L.O.Evans,proxies	25
Caleb Haley & Company	" "	200
J. J. Flanigan	" "	200
L. M. Runsey	" "	100
Samuel Stein	" "	10
Mina B. Sheley	" "	200
Maurice Ober	" "	750
Henry C. Frank	" "	200
P. Kunz, Jr.	" "	200
I. W. Lukach	" "	100
William Maas	" "	2,700
Frederick Nusbaum	" "	300
E. C. Westervelt	" "	1,000
C. B. Van San	" "	300
A. J. Shores	" "	300
Harry S. Weil	" "	100
Marco J. Medin	" "	500
M. S. Largey by E. S. Ferry and Willard Hamer, proxies		100

Total 297,578

And the following stockholders voted against the said resolution:

Stockholder	No. of Shares.
J. R. Walker in person	2,110
Peter Geddes, by J. R. Walker, proxy	3,100
Eugene Blum, by W. J. Barrett, proxy	400
Isaac Blum	1,600
Edward Blum	1,175
Isadore Bear	200
J. S. Bear	500

<i>Anaconda Copper Mining Co. et al.</i>		365
Alphonso Dryfoos	by W. J. Barrett, proxy	600
Dryfoos, Blum & Co.	" "	400
Joseph C. Stettheimer	" "	1,350
Kurzman I. Frankenheimer	" "	200
H. S. Everett	" "	700
Margaret Ann Meehan	" "	1,050

Total 13,385

More than two-thirds of the entire capital stock of the company having voted in favor of said resolution, the same was by the chair duly declared carried, and the officers of the company were instructed to carry its purport into full operation and effect.

Upon motion, duly made, seconded and unanimously adopted, the said meeting of the stockholders of said company was adjourned.

E. S. FERRY,

Chairman.

L. O. EVANS,

Secretary.

State of Utah,

County of Salt Lake, ss.

E. S. FERRY being first duly sworn, says upon oath: That he is the person who acted as Chairman of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company, in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D. 1911; that the foregoing is a copy

of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

E. S. FERRY.

Subscribed and sworn to before me this 9th day of May, A. D., 1911.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913

State of Utah,

County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me, WILLARD HAMER, a Notary Public, in and for said County and State, personally appeared E. S. Ferry, known to me to be the person whose name is subscribed to the foregoing minutes of special meeting of the stockholders of the Alice Gold & Silver Mining Company, as Chairman thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instruments.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate first above written.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

State of Utah,
County of Salt Lake, ss.

L. O. EVANS, being first duly sworn, says upon oath: That he is the person who acted as secretary of the Special Meeting of the stockholders of the Alice Gold & Silver Mining Company, held at the principal office of the company in the Utah Savings & Trust Company Building, Salt Lake City, County of Salt Lake, State of Utah, on the 8th day of May, A. D. 1911; that the foregoing is a copy of the minutes of the proceedings had at such stockholders' meeting, and is a full, true and complete copy of the minutes of said stockholders' meeting, held as aforesaid, at the time and place aforesaid, and that the said minutes show truly and completely all of the proceedings had at the said meeting.

L. O. EVANS.

Subscribed and sworn to before me, this 9th day of May, A. D., 1911.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.
Residing at Salt Lake City, Utah.
My Commission Expires May 16, 1913.

State of Utah,
County of Salt Lake, ss.

On this 9th day of May, A. D., 1911, before me, WILLARD HAMER, a Notary Public in and for said County and state, personally appeared L. O. EVANS, known to me to be the person whose name is subscribed to the foregoing minutes of

special meeting of the stockholders of the Alice Gold & Silver Mining Company, as secretary thereof, and also to the foregoing affidavit, and acknowledged to me that he executed the said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal, the day and year in this certificate first above written.

WILLARD HAMER,

[Seal] Notary Public for the State of Utah.

Residing at Salt Lake City, Utah.

My Commission Expires May 16, 1913.

WE, the undersigned stockholders, and proxies and representatives of stockholders of the Alice Gold & Silver Mining Company, present at the Special Meeting of the stockholders of said company, held on the 8th day of May, A. D., 1911, hereinbefore recorded, do hereby certify that the foregoing minutes of the said meeting are full, true and correct; and we, and each of us, did, at such meeting, and hereby do, concur in each and all of the resolutions and proceedings in said minutes recorded.

IN WITNESS WHEREOF, we have this day of May, A. D. 1911, hereunto subscribed our names and set opposite thereto the number of shares of stock by us respectively owned or represented at said meeting.

E. S. FERRY Owning and representing 100 shares.

L. O. EVANS, E. S. FERRY Representing 297,478 shares by proxy.

WILLARD HAMER Representing 100 shares by proxy,

WE, your committee appointed to examine and report upon the proxies submitted to the Special Meeting of the Stockholders of the Alice Gold & Silver Mining Company, at its meeting on May 8, 1911, hereby report that we have examined all of such proxies, and we find that there has been filed with the secretary proxies from the stockholders of the company, representing 308,754 shares of the capital stock of the company. Said proxies so examined are herewith returned with this report.

L. O. EVANS,
WILLARD HAMER,
Committee.

State of Utah,
County of Salt Lake, ss.

I. W. Ferry, being first duly sworn, deposes and says:

That he is a citizen of the United States, over the age of twenty-one years; that he resides in Salt Lake City, State of Utah, where he has resided for a number of years last past.

That he acted as Chairman at a special meeting of the Stockholders of the Alice Gold & Silver Mining Company, held at the principal office of said Company in the Utah Savings & Trust Company Building, Salt Lake City, State of Utah, on Monday, the 8th day of May, A. D. 1911, at ten o'clock A. M. of said day.

That the foregoing and hereunto annexed first thirteen pages is a full, true and correct record of all the proceedings had at said stockholders' meeting, and that the foregoing and hereunto annexed nineteen pages is a full, true and correct copy of the records of said Alice Gold & Silver Mining Company, pertaining to the said meeting of the stockholders of said Alice Gold & Silver Mining Company; that the foregoing nineteen pages is a carbon copy of the original type-written records of said meeting, as the same are kept by said Company, and the same was furnished by me to J. R. Walker and his Counsel, at his request.

E. S. FERRY.

Subscribed and sworn to before me this 27th day of December, 1911.

G. S. MARR,

Notary Public.

My commission expires June 18, 1915.

By MR. WALSH: I will offer the map, Plaintiffs' Exhibit 1, identified when Mr. Goodale was on the stand. (Whereupon said map was introduced and received in evidence.)

By MR. WALSH: I offer in evidence the table from page 23 of the report of the United States Geological Survey for 1910, which shows the copper production of the United States as follows:

State	1910
Alaska	4,311,026
Arizona	297,250,538
California	45,760,200

<i>Anaconda Copper Mining Co. et al.</i>	371
Colorado	9,307,497
Idaho	6,877,515
Michigan	221,462,984
Montana	283,078,473
New Mexico	3,784,609
Nevada	64,494,640
Oregon	22,022
South Dakota	43
Utah	125,185,455
Washington	65,021
Wyomng	217,127
Eastern States and unapportioned	18,342,359
Total	1,080,159,509

[Testimony of Howard C. Buzzo, for Complainants]

HOWARD C. BUZZO, called as a witness on behalf of the complainants having been first duly sworn testified in substance as follows:

My name is Howard C. Buzzo. I am living at Walkerville, Montana. I have been acting superintendent of the Alice property since November, 1906. The character of my work has been looking after leases and doing office work. The Alice mine office is at Walkerville. It is on the Alice millsite claim adjoining the Alice claim. My father preceded me in that position. Since 1906 the work on the property has been confined practically to the work of lessors. Besides myself, two watchmen were regularly employed by the Alice Company. The number of lessors for the Alice for the last four or five years has varied from eight

to thirty. Some of them were simply taking ore out in the upper levels and some of them had shafts and worked from the surface and used windlasses. The lessor would take a certain portion of the ground and get whatever he could out of it and pay a certain royalty out of what he took out. The ore was shipped to the American Smelting & Refining Company at East Helena, to the Washoe smelter at Anaconda, the Washoe Smelting Works and the Butte Smelting Works. One hundred and fifty feet was the deepest any of them went. During that time Mr. John Gillie was my superior officer. I reported to him in regard to operations. Up to a little over a year ago we used to send the reports to Mr. J. W. Allen of New York in care of the Alice Gold & Silver Mining Company. He was secretary or president, I believe, but I got my orders in Butte from Mr. Gillie. We had occasion to consult attorneys about the business of the Alice Company on two or three occasions in regard to various matters that came up in regard to real estate and so on, and on such occasions I went to Capt. D. Gay Stivers. He seemed to be identified with the Alice Company. The first I knew of it was his attendance at the stockholders meeting in Salt Lake and his sending in his expenses in connection therewith. I have not been obliged to consult him during the last year. That was three or four years prior to last year. I found Capt. Stivers in the Hennessy building on the sixth floor in the legal department of the Anaconda Copper Mining Company. Mr. A. C. Carson is agent

of the Alice Gold and Silver Mining Company and also a director, but he simply counter-signed checks, but that must have been three years or more ago. He left Butte. Checks were also counter-signed by Mr. Gillie and Mr. Allie. Mr. Allie's office is on the sixth floor of the Hennessy Building. You enter Mr. Allie's office through the Anaconda Company's office, waiting room; that is, the outside entrance admits you to the general waiting room the legal department of the Anaconda Copper Mining Company and there you send in word and you are admitted to the office of Mr. Allie. I also talked to Mr. Dunsey, assistant to Mr. Gillie, in regard to the affairs of the Alice Company in Butte. The check for my services was counter-signed the same as the other checks. The account was kept at the Daly Bank & Trust Company at Butte. Since this property has been taken over, the general office of the Anaconda Company attends to the cash end of it. Prior to that time, the expenses of conducting the affairs of the company were greater than the amount derived from its lessors. The deficiency was made up through the New York office of the Alice Gold and Silver Mining Company prior to about a year ago. When there was a deficit Mr. J. W. Allen, secretary and treasurer of the Alice Company, drew on New York and we had an account with the Daly Bank & Trust Company.

Cross Examination.

I have resided in Butte and vicinity for nearly eighteen years. I came to Butte with my father,

who came as superintendent of the Alice Company. He succeeded Capt. Hill. At the time we moved up to what is known as the superintendent's house on the Alice property, and I have been more or less intimately acquainted and familiar with the property since that time. The Alice property was not being actively worked in November, 1894. Mining operations were suspended when my father and I came to Butte. They were attempting to run the mill on custom ore and partly on tributors' ore. The tributing system means that men are given leases and pay a royalty of twenty-five per cent on the mill returns. As a rule these miners work some of the low spots and in the stringers adjacent to the old workings. The company could not profitably work these places that are worked by the tributors. The shaft of the Alice mine was about fifteen hundred feet when we came to Butte. They had let water float up to the thousand foot level. That was because they thought it was not necessary at that time to work down there, and that the shaft would remain in better condition if it was flooded. All that I could learn in regard to the mine was that below the ten hundred foot level they had to stope, and that the good grade ore was from there up, and outside of that they had nothing but a low grade ore. We closed the mill down in 1899, and the water was pumped to use in the mill, and we had no further reason to pump it and it came to the seven hundred foot level. I am only familiar with the portion of the workings above the flooded portion

subsequent to 1899. Some of the tributors had been working from the surface by reason of a small shaft and windlass scattered about on several claims. We have two or three claims there and they have been working on a dozen of them at different times. In most cases these veins are small, but once in a while they will run across an old filler that has been let go, a pay streak before, something that was left. I do not know of any place in the Alice mine where the company could enter into the mining business and carry it on at a profit at the present time. The Alice contains a large body of lead and zinc ores. In the matter of treatment of ores, it is probably the most refractory zinc ore that is known. I do not know of any smelting process by which the zinc ores of the Alice Company can be worked at a profit. Frequently attempts have been made to work these ores. In addition to the two watchmen and myself, from time to time, as it was necessary, others were employed and paid by the Alice Company. They worked under my supervision. I consulted Mr. Gillie in regard to anything that we might call operations in regard to the business outside of the Alice itself; anything at all that would come up. I regarded Mr. Gillie's advice and suggestions with reference to any mining proposition as a benefit. I have also consulted Mr. Dunsey, who is assistant to Mr. Gillie. He is regarded as a competent mining man. I also consulted with Capt. Stivers with reference to the law regarding squatters' rights and so on. A number of people squatted upon

the surface belonging to the company and erected small houses. The advice, suggestions and assistance that I received from Capt. Stivers in the legal department was helpful to me, and through it the rights of the Alice Company were protected. I attended to the banking of the Alice Company. I obtained some returns from these ores for the company, and I deposited that money to the credit of the Alice Company up to the time the property was taken over by the Anaconda Company. I said that the receipts were not sufficient to take care of the expenditures which consisted of insurance, taxes and the watching of the property. The policy of the company was to endeavor to earn as much money as possible in order to earn the fixed charges against the company's property. At the time the transfer was made to the Anaconda Company, I believe the Alice Company was indebted to the Butte Coalition Company.

Redirect Examination.

The Butte Coalition has been the owner of a majority of the Alice stock for some years. There didn't seem to be any difference in the way conditions were there and the way business was conducted when the Butte Coalition Company became the owner of a majority of the stock of the company. The mining operations, of course, that have been carried on by the Alice Company are trifling and inconsequential in comparison with the mining operations carried on in the city of Butte. There is a comparatively insignificant equipment at the Alice as compared with the

Badger State or the North Butte. After the Alice shaft houses burned in 1902, we put some other machinery which we had in its place, making a smaller plant, and we bought very little machinery there prior to 1899, nor have we established any new equipment except that we took some machinery that was around there. The process of the old Alice mill was pan amalgamation. That process for the reduction of ores is obsolete in these days, except in some localities where they cannot use anything else. I do not know of any of them operating in the state of Montana now and have not been operating since 1900 that I know of. The main lode running through the Alice property is called the Rainbow. It is called the Rainbow lode because it forms a kind of an arc—on the western end it runs northeast and on the eastern end it runs southeast. To the east of the Alice mine this vein extends into the Poser Claim, the Elm Orlu, the Black Rock, the Niagara and the Butte Superior. They are mining these zinc ores on this same lode over on these claims, but the ores are not similar in character. The last big attempt that was made to work the zinc ores on the Alice was in 1910. That was ore that we shipped to Colorado at that time. There was equipment on the property for working zinc ores in 1905, and 1906—the Wisner mill. The North Zinc Company leased the mill for the purpose of treating the zinciferous ores, but it failed and burned up. I think the failure coincided with the burning. The North Zinc Company put up a mill there, and they were oper-

ating zinc ores and the mill burned down and they quit. I endeavored to find some way to increase the earnings of the property through the treatment of zinc ores. That effort did not take the form of any exploration and development below the six hundred.

Q. Now, no one really undertakes in that region in Butte to do any exploration or development at a less depth than from twelve to fifteen hundred feet, do they?

A. If they have original ground they certainly do.

Q. Do you know of any ground in that vicinity that is worked for copper, for instance, from the surface?

A. No, there is no ground near there that is worked for copper that I know of.

Recross Examination.

Before the Alice works burned down they were equipped with machinery of an old pattern. It was inadequate at that time. It was large enough for anything that the Alice was doing. As a mining man I would not regard it as being a good business policy to place extensive equipment in the Alice mine at the present time. I know positively that the operations of the North Zinc Company were not profitable upon the Alice ores, and they switched over the ore from the Lexington and other mines. The North Zinc Company, on account of the action of the Alice Company in the matter of the presentation of claims, etc., went through a receivership and bankruptcy. The re-

lationship between these two companies was that the North Zinc Company leased the sixty stamp mill building, and had some arrangement, but I cannot define it, for treatment of the Alice ore. We have a lot of zinc ore exposed now, if we could treat it properly, which would be sufficient for us to go ahead with any plant. Defendants' Exhibit A shows the profit or the losses over the running expenses since 1894 to 1911 from the ores, improvements, etc., that were sold. It was prepared by myself from the reports, accounts, etc. of the company. They were operated ten years, I think.

By MR. KELLEY: I will ask to introduce this, if the court please. I may say to the court that with the exception of the year 1894, when the company's operations show on a production of \$224,336.00 as against disbursements of \$226,597.00, a loss of \$2,261.04, that the operations of the company showed continuously a loss with the exceptions of the years, ninety-five, ninety-six, ninety-seven and ninety-eight, when the company made a profit varying from ninety-seven thousand to twelve thousand dollars in ninety-eight, the list being gradually diminishing with the diminished operations of the company.

The total amount of the dividends shown is \$1,075,000.00. These dividends have been paid by the company, the first dividend being paid March 15, 1881, and the last dividend was paid April 27, 1898.

By MR. WALSH: I will offer it in evidence.

(The said document was received in evidence and marked Plaintiffs' Exhibit 4).

Said exhibit is in words and figures following, to-wit:

"LIST OF ALL DIVIDENDS PAID

BY

ALICE GOLD AND SILVER MINING COMPANY.

400,000 Shares

Par Value, \$25.00

Dividend No.	Amount per Share	Date Payable	
1	10 cents	March	15, 1881
2	do	April	15, 1881
3	do	May	16, 1881
4	do	June	15, 1881
5	do	July	15, 1881
6	do	August	15, 1881
7	do	September	15, 1881
8	do	October	15, 1881
9	do	November	15, 1881
10	do	December	15, 1881
11	12½ cents	June	2, 1884
12	12½ cents	September	1, 1884
13	12½ cents	December	1, 1884
14	12½ cents	March	2, 1885
15	6¼ cents	June	8, 1885
16	do	September	10, 1885
17	do	December	10, 1885
18	do	March	10, 1886
19	do	June	15, 1886
20	do	September	13, 1886
21	do	December	10, 1886
22	do	December	12, 1889
23	do	May	10, 1890

Anaconda Copper Mining Co. et al. 381

24	do	July	1, 1890
25	do	September	10, 1890
26	do	December	8, 1890
27	do	April	30, 1891
28	do	August	25, 1891
29	do	November	25, 1891
30	5 cents	December	31, 1896
31	do	April	7, 1897
32	do	October	25, 1897
33	do	December	20, 1897
34	do	April	27, 1898

Total Dividends Paid \$1,075,000"

(Witness Excused.)

Whereupon depositions of John D. Ryan, A. H. Melin, J. W. Allen, Isaac Blum and Thos. W. Lawson were read in evidence as follows:

[Testimony of John D. Ryan, for Complainants]

Deposition of John D. Ryan, a witness called in behalf of the complainants being by Commissioner duly sworn, testified in substance as follows:

My name is John D. Ryan and I reside at Butte, Montana. I am a director of the Anaconda Copper Company. I have had official connection with that company since 1903. Toward the latter end of 1903 or the first of 1904 I was made president of the company. I was president until 1909. I resigned the presidency in 1909, and since that time have been a director. Mr. B. B. Thayer has been president since that time. I am the president of the Amalgamated Copper Company and a member of the board of directors. I have been

a director of that company I think since 1903, and president since June, 1909. I was not officially associated with either of these companies during the organization of the Amalgamated Copper Company. I was living in Denver, Colorado in 1899, and until March, 1900, when I went to Chicago to leave there and go to Montana in 1901, arriving in Butte on the 22nd of February. There was a good deal of litigation between Heinze and his companies and the Amalgamated Companies when I came to Montana. It is true that that litigation was eventually disposed of by the purchase of practically all of the Heinze properties in Butte. The purchase was consummated in February, 1906. The title to the Heinze properties passed to Thomas F. Cole and by Thomas F. Cole was transferred to the Red Metal Company. I had something to do with the negotiations that eventually led to the purchase. They had been pending, I should say, more than a year. I took them up within two years after I went with the company. It was either the last week in May or the first week in June that I became a director of these companies. It was considered desirable on the part of the Amalgamated Copper Companies that the Heinze litigation should be terminated. There was no one directly associated in the negotiations with Heinze who had any connection with the Amalgamated Copper Company but myself and attorneys who were acting for me. These negotiations were all with Mr. F. Augustus Heinze. I did not feel that I was representing the Amalgamated

Copper Company in these negotiations. I had no authority from the Amalgamated Copper Company to proceed with the negotiations, and as a matter of fact was never acting for the Amalgamated or its interests except in so far as the dismissal of the litigation would prove to be to its interests, and I was trying to bring that about as a part of the trade. As far as I know my associate directors of the Amalgamated Copper Company were not at all times conversant with the fact that negotiations were being conducted by me, with the exception of Mr. Rodgers. I don't remember discussing with any of the other directors anything at all in connection with the negotiations. Mr. Rodgers was then president of the company. He was desirous of terminating the litigation, but as to whether the Amalgamated Copper Company was or was not would be a matter of opinion. There never had been any connection and never had been any discussion with him brought on that point. I am quite sure that Mr. Rodgers was desirous of ending the litigation, he being conversant with it, and I am quite sure that we were in accord as to the desirability of doing away with the litigation. Ten and one-half million dollars was the cash paid for all of the Heinze properties. With reference to some provision for obtaining the money with which to make this purchase, as I remember it, I made the allotments of stock that brought the money. There was not any difficulty about raising the money. The requests for allotments had aggregated very

much more, in fact several times the total amount of stock that it proposed to issue long before money had to be provided. As far as I recall I made the allotments of stock myself and without any directions from anybody. It is correct that the transaction took this course: The transfer was made to Mr. Cole and from Mr. Cole to the Red Metal Mining Company and then the Butte Coalition Company was organized and it became the holder of the stock of the Red Metal Mining Company. I don't remember any public notice I gave of the purpose to organize the Red Metal Mining Company. There was not any effort to hide the fact that the Red Metal Company was organized for the purpose of acquiring these properties and such other properties as it might wish to acquire. I do not recall any public statement to that effect. I had conferences with a number of men with reference to taking over the Heinze property, some of them connected with the Amalgamated Company and many of them were not; men that were perfectly responsible and good for anything they undertook to do, and I made the allotments of stock after therequests had been made by those men. The original list of those subscribers was over one hundred and fifty, I think. I had requests for subscriptions and had talked with people who wanted the allotments—who wanted the stock—and I knew all that I had to do was to send word to those people and they would send in their money. Mr. Cole was a man of large means who was interested in mining in

the Butte camp and elsewhere. He had a large following, and he was willing to buy the properties and take his chances on turning them over to a company that could be organized later. As far as I could tell that was his position in the property. Aside from whether he had anything at all to do with the negotiations which resulted in the agreement to purchase, he was associated with me in the actual acquisition of the properties. At that same time Mr. Cole and I were joint stockholders in other mining ventures. In the literature regarding this subject, the expression "Cole-Ryan Properties" was frequently used in the newspapers. Previous to the organization of the Red Metal Company, I don't know that that term was applied to any company except the North Butte Company, and I had nothing to do with the organization of that. I don't remember that I ever heard the term "Cole-Ryan Property" in connection with any other property. I did not invite subscriptions of stock to the Red Metal Company. I think the Butte Coalition and the Red Metal were organized at the same time. The intention all along was to organize the Butte Coalition to hold all of the stock of the Red Metal, except directors' qualifying shares. Mr. Cole paid Mr. Heinze ten and one-half million dollars, and transferred the properties acquired from Mr. Heinze to the Red Metal Company for the same amount. I don't recall just how the money was provided by Mr. Cole. I cannot recall that. I think with the exception of the incorporators qualifying shares,

the stock of the Red Metal Company was originally issued to Mr. Cole for the property he transferred to it, and that stock was then transferred to the Butte Coalition Company, I think. The Red Metal Company had a capital stock of eleven million dollars. The Butte Coalition paid for the Red Metal stock and the Alice Gold and Silver Mining Company stock that was transferred to it, the lump sum of eleven million dollars. The subscription to the Butte Coalition was for its entire capital stock, that is, one million shares at fifteen dollars par. The four million was the excess over and above the eleven million dollars paid for the Red Metal, for the Heinze properties and the stock in the Alice Companies in cash in the treasury of the company. I haven't the original subscription list. I don't think it is in the files. It was in my own personal memoranda and it was not a company matter, and as far as I know, I haven't it, and I don't know why it should be in those files, and I don't think it is.

MR. GARVER: This question is objected to as assuming that there was a formal subscription list, whereas the testimony of the witness indicates that the arrangement, if any, made with the subscribers was entirely informal.

I don't know that there was a regular subscription list. As I say, I made the allotments of stock to subscribers, people who wanted stock in the company. There was no such thing as a formal subscription list. I presume I had some written memorandum about the matter. I don't know

just in what form I carried it. I don't suppose I carried it all in my head, but it was not anything but a distribution of stock to people who requested it, made by me personally. Mr. J. W. Allen was secretary of the Butte Coalition Company, at the time it was dissolved. He was likewise secretary, I think, of the Alice Company. He is here now. He is now secretary and treasurer of the International Smelting & Refining Company, and I think he has some connection with the Green-Canaan Company. The title to all the Red Metal properties passed to the Anaconda Company in 1910, and I think the Red Metal Company has been dissolved. I presume that Mr. Allen has the books and records of the Butte Coalition. I cannot recall the principal subscribers, there being over one hundred and fifty I think. I was a subscriber. The entire amount of the capital stock—a million shares—were subscribed by these one hundred and fifty people or thereabouts. I am not sure who the officers were immediately after its organization, but within a few weeks any how Mr. Thomas F. Cole was president, W. D. Thornton, vice-president, J. C. Lalor, C. D. Fraser and James O'Grady were directors. The Thomas F. Cole is the Mr. Cole we have been referring to. Mr. Thornton is a resident of Butte and Mr. Lalor was a former resident of Montana. I think he was living at that time in New York. I don't think he had ever been in the employ of the Anaconda Copper Mining Company. He was at one time manager of the estate of Marcus Daly and prior

to Mr. Daly's death he was his private secretary. Mr. O'Grady was at that time connected with the Boston and Montana Company at Great Falls and resigned his position there to come on and accept the treasurership of the Butte Coalition Mining Company. The Boston & Montana company at that time was one of the subsidiaries of the Amalgamated Company. He afterwards returned to Great Falls, resuming his position with the Boston and Montana. The officers of the Butte Coalition were Thomas F. Cole, president; I, myself was vice-president, Urban H. Broughton, James Hoatson, Chester Congdon, B. B. Thayer, F. L. Ames, William B. Dickson and A. C. Carson were directors. Mr. Broughton was the manager of the United Metals Selling Company. At this time, that company is a subsidiary company of the Amalgamated. Then it had no interest in the stock of the company, but the subsidiary mining ^{companies} ~~company~~ of the Amalgamated were selling metal through the United Metals Selling Company. Mr. Hoatson is a mining man who lives at Calumet, Michigan, and was president of the North Butte Mining Company, and is a brother-in-law of Mr. Cole. Mr. Congdon is a resident of Duluth, Minnesota, and was interested in the North Butte Mining Company. He was an old time associate of Mr. Cole. Mr. Thayer, the gentleman who is now the president of the Anaconda Company was a director of the Anaconda and Amalgamated at that time, I think. Mr. Ames is a Boston man. He had been a stockholder in the North Butte Com-

pany, but had no official connection with any of the companies. Mr. William B. Dickson had no connection with any of the companies that the Amalgamated was connected with. He was connected with the United States Steel Corporation, one of its officers, and lived in New Jersey. Mr. A. C. Carson was general manager of the North Butte Mining Company and was made general manager of the Red Metal Mining Company when it took over the Heinze properties, and James O'Grady is the same O'Grady who was a director of the Red Metal, and I think he became treasurer at one and the same time of both of these companies. The operation of these properties was thereafter conducted by the Red Metal Company with Mr. Carson in charge as general manager. I could not tell as to who the Butte attorneys for the company were. I think that Messrs. Kelley and Evans did most of the legal work for the Red Metal Company. I don't know that the Butte Coalition had any attorneys in Montana. These gentlemen were at the same time the attorneys for the Anaconda Company, and I would say all of the business of the Amalgamated Companies and all of the subsidiary companies and the Red Metal Company was done at the same offices. Mr. Gillie is general superintendent of mines. All of the general work of the mining operations is under his supervision, including the engineering work. His offices in Butte are in the same building and on the same floor with Messrs. Kelley and Evans, the attorneys for the company, the 6th

floor of the Hennessy Building. The office of the Red Metal Company after it was organized was in the Largey Building on Broadway in Butte. As far as I know, Mr. Gillie had nothing to do with the mining operations of the Red Metal Company. The litigation in the Butte camp, so far as the Amalgamated properties were concerned and the property formerly belonging to Mr. Heinze was all dismissed when those properties last mentioned passed to the Red Metal. My relations, so far as that feature of the thing was concerned have always been entirely cordial with the Red Metal. I never had a controversy of any character with the Red Metal of any of the Amalgamated Company's constituent companies that found its way into court. The adjustment of rights as to ore bodies was left to a board of engineers. We have had differences of opinion with the North Butte as to some rights. They have always been worked out in a friendly way by conferences between officials and engineers of the two companies. In the case of the Ballaklava Mining Company, we were not so fortunate as we have a law suit pending with them at the present time affecting such rights. Differences up to the time we purchased Senator Clark's properties were handled much in the same way. There were conferences between Senator Clark's engineers and ours, discussion of the respective rights, free examination of properties on both sides, comparison with notes and generally, as you might call it, laying the cards on the table in a perfectly friendly way. The law-

yers and engineers worked together in these controversies. There had been no adjustment of the controversy between myself and Senator Clark, at the time we purchased his property. We had not brought any action against him or threatened one.

The acquisition of the Alice stock originated in an option they had from the Walkers of Salt Lake and people associated with them, taken sometime in the summer of 1905, on a majority of the stock of the Alice Company. As I recall it now, under this option they were to deliver me a clear majority of the stock and an additional amount up to a certain limit if other people wanted to join them in the sale, people that they had not been able to reach. The same blocks of stock had been under option for something like two years before, to a man named Wizner, who was experimenting with a zinc process at the old Alice mill, and he forfeited his option, and they entered into negotiations with me. After some several talks with Mr. T. W. Buzzo, who was then manager of the Alice properties in Butte, Mr. M. H. Walker, and O. K. Lewis, and a number of other gentlemen came from Salt Lake to see me at Butte, and I took the option at one dollar and a half a share or a basis of \$600,000 for the property. The company at that time was in debt somewhere around twenty or twenty-five thousand dollars. The option was taken in the name of W. D. Thornton. I don't know where the original is. It contemplated the purchase of at least a majority of the shares of the Alice stock. There were four hun-

dred thousand shares in the company and they were bound to deliver at least a majority and then there was as I remember it, an additional number of shares which they had a right to deliver to me during the life of this option with their own stock, and the reason they could not make the number of shares definite was that they wanted to give the right to other people to sell with them if they were so disposed. I am sure the price was a dollar and fifty cents a share. I got the option sometime in the summer of 1905 and finally made the purchase of the stock under the option in February, 1906. I don't think I had in mind the organization of the Butte Coalition when I took the option; at least that is as I remember it now, but some months after taking the option, when the negotiations with Mr. Heinze had proceeded to the point where I was quite sure we were going to buy his properties, I thought it would be a very good thing to include this Alice stock. I think before the purchase was made it was fully decided to sell the Alice stock with the Red Metal stock to the Butte Coalition. Many of the properties of the Red Metal are contiguous; a good many of them are outlying properties, but the important properties were contiguous to the properties of the Amalgamated subsidiaries—the Anaconda, Boston & Montana, Butte & Boston, the Parrot and others. The Alice properties are far to the northwest and outside of any territory that has ever produced copper in paying quantities. The Corraiss is the

most northwesterly of what are the Red Metal properties and I should say it was a half a mile from there to the Alice property, to the properties that the Alice had worked in any large way. There was no likelihood of the Alice property being worked in conjunction with the Red Metal properties. The Boston & Montana and the Butte and Boston, constituent companies, had properties lying to the south and contiguous, I think, to the Alice property. The Belle of Butte is adjoining the Alice Company's property on the south. The Moose of the Boston and Montana Company is the only other property of the Amalgamated adjoining the Alice property except on the extreme west. The Transit claim of the Butte and Boston Company and the Belcher claim of the Anaconda Company, but there has been no extensive work done in a great many years in any of that territory; that is, on the west end of the Alice properties. There has been a little work done on what is generally called leases in the Butte Camp on the Belle of Butte property. The Anaconda Company now owns the Mill View lying immediately south of the Poser. Immediately south is the Badger State. It belongs to the Anaconda Company now. It was at that time one of the Boston and Montana Company's properties. At the time I acquired this stock I don't think there was any development except on the Badger State. I think the development of the Badger State as it has been made by our companies was subsequent to the time that stock was purchased. It is producing very largely

at the present time. I should say it was 1910 before we took any quantity of ore from there. The Anaconda Company now owns the Auraria. It was one of the properties of the Boston and Montana Company. The Magna Charta is one of the Alice properties. The other principal claims of the Alice are the Alice, Blue Wing, Midnight, Curry, the Rising Star, Walkerville and the Pay Master.

As I recall it, the only encouragement I got in taking the Alice option was from Mr. Buzzo, the man who was then in charge of the property for the Alice Company. He had tried in every way he could to sell the stock for the people he was working for, and he talked with me a number of times and I came to the conclusion that at a price of approximately six hundred thousand dollars for that group of claims, considering the history of the district with the fact that they had been large producers of silver and with the expectation that zinc some day would be an important product in Butte, I thought it was worth the gamble. There was not any engineer who gave me any encouragement that the property was worth buying. I think that my action in taking the option was generally criticized by our own engineers and directly to me. I had nothing like a written report upon the property prior to my purchase of it. Mr. Wissner had a zinc process and he had people put up money to try out this process, and took an option on the Alice property before trying the process out on Alice ores. It was an absolute utter

failure as has been every other process that has been tried out on Alice ores. Immediately east of the lower portion of the Magna Charta is the Poser which is one of Senator Clark's properties, and east of that the Elm Orlu, also one of his. I think the Poser is producing some copper ore and the Elm Orlu some copper, but mostly zinc. The Poser is producing zinc, too, but I think they are getting some fairly good copper ore from the Poser. The production of copper ore in either of these two being very recent. These are the only two mines that were producing which he retained after the sale of his principal mines. Since that time the Poser I think has produced a reasonable amount of copper, and copper ore has been taken from the Elm Orlu, but it is not an important body, as far as copper ore goes. The Butte and Superior Company are operating on the Black Rock properties east of Butte producing zinc ores. These various claims that is, the claims of the Butte Superior, being operated for zinc, the Elm Orlu, the Poser, the Magna Charta and the Alice are all located generally upon the same vein, the location of which would indicate the same general formation. There may be different veins. It is generally known in the camp as the Rainbow Lode. The only workings of the Alice property were on the Rainbow Lode, and I think the important workings of these other mines are in that general strike. The lode pursues one course of a crescent, generally east and west. The Rainbow Lode runs through that country generally

pretty well defined, and it is a large lode, but of course, it is comparatively a small part of the surface of the country. In the Badger State claims there is a strong surface showing. That vein runs generally north and west. I don't know how it strikes the Moose. Of course, I don't want to appear to be testifying as having engineering or geological knowledge. I am only the business manager of the company. As to the consideration that induced me to put this Alice stock in with the Red Metal stock to the Butte Coalition—I never had any great faith in the Alice property. I thought it was a good purchase at that price, around six hundred thousand dollars in that territory. I did not want to buy it for myself. As a matter of fact, I did not want to buy it for our company, but for a company like the Butte Coalition that was going in and acquiring a more or less limited territory in the Butte camp with a good deal of money in its treasury, I thought it was a good gamble, I thought it was a good opportunity for them to acquire this property and spend some money on it in developing it. We could not tell when the Butte Coalition was organized just what our expenses were going to be, but I remember figuring it roughly I paid one dollar and a half for the Alice stock and I had some commissions to pay to people who helped me do the work, and who had taken some risks in connection with it, and I figured we would charge the Butte Coalition Company one dollar and sixty-five cents, or ten per cent upon the option price of this stock. Now,

there were 230,000 shares at \$1.65 a share, that amounted to \$379,000 or \$380,000. That left say \$120,000 to cover all of the expenses for all of the negotiations and all of the organizations of the Red Metal Company, the Butte Coalition Company, everything in connection with it, and to just give you as clearly as I can what our idea was in putting these things together, we made up our minds that we would not make one dollar profit or allow anybody to make one dollar profit outside of what profit there might have been on that fifteen cents a share on the Alice stock to some of the others, not to me. I did not take a cent. When we had all of our expenses paid that we could figure on and get in, we had something like \$16,000 or \$17,000 left over out of that \$500,000, and that money of course did not belong to anybody. As a matter of fact it was just that much profit on doing \$11,000,000 of business and I directed that that money be put in a fund and carried in an account to defray any unforeseen expenses that might come up in the future. It went along for four or five years and very little came up, and the balance of it, whatever it amounted to, was turned over to the Butte Coalition Company. The Alice stock was purchased by Mr. Thornton and was paid for before any of that money came in, in anticipation, however, of it being taken up through the Butte Coalition moneys. There had been no operations on the Alice properties, excepting leases since 1893. After the Butte Coalition Company acquired control of

the stock there was no change in the operations. The leases were carried on much the same, as they had been theretofore. No direct company operation, except taken care of the property. We could not undertake to carry on any mining operations on the property. We had no money. The Company was in debt when we took it over, and we had never seen any way of liquidating that debt. It was a non-assessable stock. We could not call on the shareholders for money, and we had no way of carrying on operations. We discussed the matter of borrowing money, offering bonds to the shareholders, but in looking into the affairs, we could not see where we were justified to ask them for any money. The mine had been worked to a depth of about fifteen hundred feet, and even with silver above a dollar an ounce, had closed down. No one had ever been able to find a process that would make the zinc ore in the mine commercial, and there has never been known to be any copper in the mine, so we did not see what representations we could make to the shareholders to induce them to put up money to carry on operations. As to the essential difference between zinc ores in the Alice properties and the zinc ores in adjacent properties on the same lode—the zinc ores east of the Alice properties are cleaner ores. They run very high in zinc, contain comparatively no iron. The zinc ores in the Alice produce anywhere from thirteen or fourteen to twenty per cent of iron. That is the thing in the ore that makes it impossible to concentrate to a

degree that will render it profitable. During that time I did not procure any reports from any engineers with respect to the possibility of the successful operation of the Alice property. They could not see anything in the Alice property because there is eight hundred feet of water in it. As far as any report on the surface indications and that kind of thing went, I had those reports from our engineers when they tried to discourage me from paying one dollar and a half a share for the stock.

Q. Hadn't Senator Clark's Elm Orlu on the same lode been operating with surprising success in the meantime?

A. We always knew that the zinc ore in the Elm Orlu was a zinc ore that would make a clean concentrate, and we knew that the ore in the Alice would not.

I don't think the Poser mine or the Pilot Butte had made any development that would give it any value up to the time that the Alice property was sold to the Anaconda Company. The Badger State was developing and had commenced production about that time, but it was not a large producing mine. There is not anything in the way of very promising developments going on in the Butte camp that our engineers are not very well informed about. The consideration that eventually induced me to have these properties acquired by the Anaconda Company was the opportunity to sell for something that had a market value then of a million dollars and a half for property that I had bought a few years before on a gamble, on the

basis of six hundred thousand dollars. I thought it was a very good trade and a very good profit. That was from the standpoint of whoever owned the property—from the standpoint of any Alice shareholder. I thought it was a very good round price for his holdings. From the standpoint of an Alice stockholder, I thought having bought this stock on the basis of six hundred thousand dollars it would be a good thing to sell it to an Alice stockholder at a price of two and one-half times that. I thought it was a very good trade. I was at that time a stockholder of the Butte Coalition and was until it was dissolved. At the time the sale was made, I was a director and vice-president. At the same time I was a director of the Anaconda Copper Mining Company and the president of the Alice Company and a member of the Board of Directors of both. Now, speaking from the standpoint of a stockholder and director of the Anaconda Company, I thought the Anaconda Copper Company could make very much better use of the property than the Alice Company. The Alice Company was without means, was in debt, had nothing in its plan of organization that permitted raising the money except to mortgage the property and attempt to sell bonds, and I had never considered that we had anything upon which we could base representations of the value of the property that would warrant anybody in loaning us a large amount of money. On the other hand the Anaconda Company was a large operating company,

with a large cash surplus, with an organization capable of carrying on the work at the lowest possible cost, with everything in the way of transportation, smelting and everything in operation, and it could afford to spend the money necessary to develop the Alice Company, when the Alice Company itself would not be able to raise the money and could not fairly and justly ask anybody to loan the amount of money required to do all that amount of work. The price was fixed by general conference,—in the matter of the Alice Company the price was fixed more or less arbitrarily. There was nothing in the value of the mines, there was nothing demonstrated that anybody could fix any value on. It was matter of trade between the representatives of both companies. Of course, when I closed out with Mr. Heinze I was on one side doing the best I could for the Amalgamated and Mr. Heinze was doing the best he could for his company. When we traded with Clark, Mr. Clark was looking after the interests of his company and I was looking after the interest of the Anaconda and the Amalgamated Company. The Alice Company appointed a committee to confer with a committee representing the other companies. I think the Board of Directors appointed the committee and I was president of the Board at the time. I don't remember who the members of the committee were. My associates upon the Board representing the Alice negotiations were Mr. Carson and Mr. Thornton. They were the two that I relied on more than anybody else in the Alice Company.

They were not connected with the Anaconda or with any of the other Amalgamated companies, but they were directors of the Alice, both men of very good knowledge of the Butte Camp and its history, and as a good a knowledge as anybody had of the Alice Company. Mr. Carson was manager of the Lexington mills, the adjoining property to the Alice, for years when it was in operation, and just before it closed, and probably had as intimate knowledge of that important district and Lexington districts as anybody who was then living. I don't recall who represented the Anaconda Company. There were committees representing the different companies that were in negotiation for the purchase on the part of the Anaconda Company and for the sale on the part of the other companies. I don't know that Mr. Thornton, Mr. Carson and myself agreed readily upon the price, but I don't recall any dispute. In reality the price was arbitrarily fixed. It had to be. It could not be otherwise. The price was not fixed by me. Neither the price on that or any of the other properties. I was very careful to see it was not. I realized that just such a question as this would be asked. I don't know that I would have so little common sense as to order on the part of the Alice Company prior to the sale of the Anaconda an investigation to be made by anybody to ascertain the then value of the Alice property. The Alice had no value except as to its mine. The whole matter of the value of the Alice mine was discussed pro and con at the time I took that option

and as I say all the talent in our organization was criticising me for taking that option. Nothing had developed after that time up to the time of the transfers of these properties to the Anaconda Company in the Alice mine or on the Alice mine property that was worthy of investigation. We all knew the development of the adjacent property in a way, and enough to guide us in our judgment as to the effect of that value on the Alice Company. The committee that were looking after the Alice end of the trade certainly satisfied themselves what they thought was a reasonable value for the property and made investigations accordingly I have no doubt. All of the committees representing all the companies did that; that being a part of the arrangement. As to the other two members, Mr. Carson and Mr. Thornton, being associated with me in the North Butte, I was a shareholder in the North Butte. I never was an officer or director, or directed any of its affairs. Mr. Thornton, as far as I know, was never a director of the North Butte or an officer, but had stock holdings. I think Mr. Thornton acquired some stock when that company was organized, the same as I did. I was living in Butte at that time. I think we were both consulted in the organization in this way—the Amalgamated Company had an option on the properties that were afterwards turned into the North Butte Company. After very careful examinations by the engineers, it was decided not to exercise that option. I had great confidence in the North Butte property, and that

decision was in opposition to my judgment. I was very anxious to prevent Mr. Heinze getting any hold of the North Butte. I felt that if Mr. Heinze who was fighting us tooth and nail acquired control of as rich a property as the North Butte that he would prolong the fight indefinitely, and that it would be very expensive for us. For that reason, the Amalgamated Company having decided not to exercise the option, I asked Mr. Rogers, the president, to allow me to interest some of my friends, to buy that property in order that it would not fall into Mr. Heinze's or any other hostile hands. He fell in with the suggestion and I told him that I was so sure of the value of the property that I wanted his permission to put any money that I could beg or borrow into the stock of the company and I wanted to be sure that I did it in such a way that no criticism could ever come on account of my taking part in the purchase of stock at that time. He told me that the decision of the Amalgamated Company had been reached against my judgment in the matter; that I was entirely free to invest in the stock of the company if I pleased, and so that there could never be any criticism in the future, he would take in his own name one hundred thousand dollars worth of the stock of that company and I could point to the issue of that stock to him in his own name forever, as being proof that I took what stock I got in my name with his knowledge and the knowledge of the Amalgamated Company and everybody concerned. Mr. Rodgers went in originally as a sub-

scriber for one hundred thousand dollars. He was at that time president of the Amalgamated Company. The Anaconda purchase of this property at that particular time, and when it had not taken the property at any time during the five years theretofore because it was purchasing the properties of all the subsidiary company of the Amalgamated and we were negotiating at that time for the Clark properties and because we thought that it was advisable for the Anaconda Company to extend its holdings and extend its property in the Butte camp to prolong the life of the company as far as possible. The Alice property was bought at that time simply because this other consolidation plan was going through and the Alice Company was without means to develop its own property and I was anxious to have the Anaconda take it over and enter upon its development. Clark turned over his property to us the first of June, 1910, the purchase was made a few months before that. The Alice purchase was made as of the 30th of April, 1910, the understanding was reached in that case as in the case of the others some few months before that time. The procedure in the case of the acquisition of the Alice property was substantially the same as that in the case of the purchase of the subsidiary companies of the Amalgamated, each of them was purchased by the issuance of stock in the Anaconda, and I think that the procedure was identical in each case; that is to say, a

meeting of the stockholders was held in each case to which was submitted the proposition of the Anaconda to issue a certain amount of its stock that was accepted then by the stockholders meeting and the board of directors authorized to complete the transfer, and the transfer was accordingly made and the stock issued. The Amalgamated Company bought the Clark property for cash and turned the properties over to the Anaconda Company for one hundred twelve thousand five hundred shares of Anaconda stock. I think Mr. Allen was secretary of the Alice at that time. Mr. Allen had his office in this building, in the same rooms as the Butte Coalition Mining Company had its office and adjacent to the offices of the Amalgamated and the Anaconda and on the same floor. In fact, the floor of this building is devoted to the use of the companies of which we have been speaking. Anyway Mr. Allen was here close by and convenient. He was in the office of the Butte Coalition Company. The procedure to be observed in Montana and Utah with reference to the Alice Company was directed by the board of directors of the Alice under advice of their counsel. I think the lawyers told the board what was to be done and the board instructed the secretary. On the part of the Anaconda Company, of course, some proceedings were necessary and the representative of the Anaconda and Montana got directions from the board of directors. I presume Mr. Thayer, the president, transmitted the directions. Mr. Allen, the secretary, un-

doubtedly sent the circulars to the shareholders and called the meetings and did the routine work, but the board of directors took action to have the work done. The Butte Coalition was a majority stockholder at that time. I cannot recall what the conferences were at that time as far as the Butte Coalition and the Alice were concerned. I don't remember who voted the stock of the Butte Coalition at the meetings. We did send some experts out here from New York to examine these various properties, which were required by the Anaconda Copper Mining Company, particularly the properties which were in operation, the mines that were in operation. Those experts were Mr. Herman Keller, Frank Klepetko, and Professor Kemp of Columbia University, and they made a report. I think it embraced the Alice. It would have to because as I say the amount of stock that the Alice got had an effect on the value of the stock the other companies got, and I am only supposing from that that they must have included the Alice. I don't know where that report would be. The result of that report was stated I remember in the circulars to the shareholders of all the companies. Of course, Professor Kemp would not get out there without making a report, but he might have made a verbal report, I don't know. The companies interested were the Amalgamated, the Anaconda, the Alice and the Butte Coalition, also the Parrot. The Anaconda itself had forty-nine per cent of its stock that was not owned or controlled by the Amalgamated. There was some Boston

and Montana stock outstanding and I think nearly all of the companies had some minority holding. If I should find such a report I will give it to you, and if I don't produce it then you may assume that there is no such written report, or if there is, that I don't know anything about it.

All of this stock of the United Metals Selling Company is now owned by the Amalgamated Copper Company having been acquired about April, 1911. It never owned any of that stock before. Mr. Rodgers, the president of the Amalgamated, during his life time owned stock in the United Metals Selling Company, as did some of the other directors, but I know of no other officers. Speaking generally, not of my own knowledge, the United Metals-Selling Company was formed to take over the business of Lewisohn Bros., who were metal merchants, and who sold the copper from a number of Lake Superior mines, some mines in the southwest, the Boston and Montana and the Butte and Boston and who at the same time did a general selling business. At the time the United Metals Selling Company was formed, the sale of the Anaconda Copper Mining Company was also given to it, but Lewisohn Bros. business was transferred to the United Metals Selling Company after it was organized. Anyway since the time of the organization of the Amalgamated Company, the United Metals Selling Company was the selling agency for the subsidiary companies of the Amalgamated and for a large number of other companies. During all that time it has

been the greatest copper selling agency in the world, handling about one-fourth of the American output now, or one-third, and has handled that proportion or more during all the period of its existence. This company sells under contract with the mining companies their output of metals. It has its agencies here in New York, and in various countries in Europe. It sells the metal and guarantees the payment of the accounts and transacts all the business of selling and charges its commission. The sale is actually from the producer to the purchaser. Lewisohn Bros. were selling for the Boston and Montana and Butte and Boston prior to the organization of the Amalgamated. Other companies operating in Butte at that time disposed of their product in substantially the same way. Shipments were made from Butte to the refiners and shipments were made from the refiners to the customers wherever located. Pig copper or blister copper the product of the converters is sent to the refinery and there it is electrolytically refined and silver and gold separated from it, and the electrolytic copper put into shapes, such as are used by the consumers of copper and shipped in that form. The sale was never made to the refiners by the large companies. The refiners do buy copper and refine it, but the refining for the large companies was all done on toll, the title to the copper, the ownership of the copper might change at times to this extent, whenever the mining companies are in need of money to finance their operation, the selling company

under its contract allows the mining company advances up to eighty or eighty-five per cent of the market value of the product in its hands. This is really not a sale but simply an advance on the consignment, but the selling company naturally has the right to pledge the copper of the companies on its loans in order to carry out that financing, but that is the general plan, mining companies get advances when they need them from the selling companies.

I produced the statement which you requested—complainants' exhibit "A" October 7, 1913, showing the production of copper, silver and gold of the Badger State mine since the commencement of operations on that property to June 30, of this year. At the present time the lowest level in the Badger State mine is approximately two thousand feet in depth. The extraction of ore in commercial quantities began, I think, at about twelve hundred feet. That vein is probably a continuation of the Jessie vein. I think there was a lean zone in the North Butte property at about that depth, but the Jessie was worked and produced ore practically from the surface, not in the same high grade bodies that were encountered from about nine hundred down. I think the two thousand and twenty-two hundred feet levels in the North Butte—by common repute,—I have never seen them myself are not as good levels as above and below. I can tell you from my mine report that I have here the distances east and west of the working shaft of the Badger State that the devel-

opments have extended. On the two thousand foot levels the workings extend easterly seventy-four feet and westerly sixty-nine feet from the cross-cut. I cannot find any report of Professor Kemp and Mr. Keller and M., Klepetko bearing particularly on the Alice property. I am quite sure that they did not make a written report particularly on that property, because they were employed by the different companies in the Anacanda consolidation to value plants, to inspect workings, and to generally pass upon the value of operating properties, which of course was impossible in the case of the Alice, as there was no plant and the workings were not accessible on account of the mine being filled up with water, up to about the 700 foot level. So far as the Alice Company is concerned, there was no written report from any engineer on the property preparatory to or anticipatory of the sale. Mr. Thornton and Mr. Carson both of whom are engineers with considerable experience in the valuation of mining properties, particularly in Butte, were directors of the Alice Company, and conferred with me as president of the company and very largely determined the value of the property for the purposes of the trade. Professor Kemp did not make any report to the Alice Company. Of that I am certain. The circular to the stockholders issued by the Directors was all the information the Directors or anybody else had, and was sent to the stockholders previous to the meeting at which they were asked to vote on the acceptance or rejection

of the offer of the Anaconda Company to buy the Alice property. I did not have specific information concerning the property from Mr. Buzzo, but I had general information. Mr. Buzzo did not talk enthusiastically about the property as I remember it, but he was very anxious to have the Alice property fall into the hands of someone who had money enough or could find money enough to open it up and develop it in the hope that something could be developed to make it a valuable property. So far as I was able to judge, he gave me whatever information he had concerning the property.

Q. I show you a circular letter issued to the stockholders of the company, marked Exhibit B, and ask you if that is the circular letter to which you have referred? (Handing witness circular letter).

A. It is.

MR. WALSH: This is offered in evidence.

(Circular letter referred to marked Complainants' Exhibit B, October 7th, 1913.)

I think this letter which bears date April 27th, 1910, signed by myself as one of the Board of Directors, was prepared by the Board of Directors. I think we all helped in its preparation. Anyway it had my approval I think. I would not sign it, unless it had. I think Mr. Allen was the secretary of the company. I was not associated in the organization of the North Butte. Mr. W. D. Thornton was a director of the Red Metal Company; otherwise not associated with me. The option

that I directed to be taken in his name on the Alice property was not for the Butte Coalition. It was for me personally. It is the same Mr. Thornton in whose name I took the option on the Alice stock. My relations with him were very close at that time, and continued so since. We have been associated in a number of enterprises. Apparently associate directors of the Alice, associate directors of the Butte Coalition. I think Mr. Thornton was a director of the Butte Coalition and I as well. He was not one of the directors of the North Butte to my knowledge; I think not. Mr. Thornton had his office here in the same building. He is president of the Greene Consolidated Copper Company. I am not a director of that company and never have been. I will make an exception to that. I think I was, in fact, I know I was for a short time in 1906. That is likewise one of the properties generally known as the Cole-Ryan properties. The Green Consolidated Company was organized and doing business for years before we had any connection with it. The Greene Cananea Company acquired control, and that company was organized by Mr. Cole and myself and our associate. Mr. Ferry is an attorney, I think, in Salt Lake City. I don't know whether he was a formal director. I don't know that he stood in the same relation to me as Mr. Evans did at Butte. I don't know what kind of a director he was, other than he was a director of the company. I don't know whether the stock which stood in his name to qualify him as a director was owned by him individually or

whether it was stock that was actually owned by the Butte Coalition or by myself or somebody associated with me. As Mr. Ferry was a director of the company and lived in Salt Lake City, where the meetings had to be held, I think probably that was the reason the secreatry sent the proxies to him. I don't know of any reason for uniting his name with that of Mr. Evans.

Q. I find his name joined with that of Mr. Thornton and Mr. C. F. Kelly, instead of Mr. Evans, by the proxy.

MR. WALSH: Mark this paper.

(Paper referred to marked Complainants' Exhibit C, October 7th, 1913.)

I cannot tell who directed the preparation of the proxy which has been marked Exhibit C. I don't know who had charge of the preparation of it, probably the secretary of the company. I don't know whether Mr. Thornton owned in his own right any shares of the Alice Mining Company at that time. I rather think he was there as the representative of the Butte Coalition, but I don't know. I don't know where Mr. Kelley owned any stock of the Alice Mining Company in his own right and I don't know whether he was there. He is the attorney for the Anaconda Copper Mining Company, and was at that time. I had no information at that time that zinc ores that had any commercial value were found in the property. I knew that there were large bodies of rebellious zinc ores in the Alice property which had been extracted to a considerable extent and

treated in the mill built by the Montana Zinc Company and treated unsuccessfully and unprofitably. That was immediately prior, for the two years prior to that time. Mr. Buzzo talked with me about the zinc ores. I don't know that he had some hopes of being able to find some process by which they could be reduced. I don't know that I would have considered Mr. Buzzo's hopes as adding any value to the property. He was a mining operator; not a metallurgist. I do not know what year Senator Clark first began shipping the zinc ores from the Elm Orlu. I don't know even approximately. I have not been in Butte much during that time. I don't know that it was intervening the time that I took this option and the time that the sale was made to the Anaconda.

MR. WALSH: There are some letters I would like to examine you about. I have sent for them, and I will have to suspend until they come. If you care to examine, Mr. Garver, you can go on, and we will take this up again.

Cross Examination by Mr. Garver:

I have refreshed my recollection as to the dates I became a director and an officer of certain of the companies. I have looked up the minutes of the companies and find that I was elected a director of the Amalgamated Copper Company on June 1st, 1908, and president of the company on June 10, 1909. Previous to that time I was a director of each of the subsidiary companies, of the Amalgamated Copper Company, but not of the Amal-

gamated Company itself. I was elected director of the Anaconda Copper Mining Company on the 28th of June, 1904, and president of that company on the 9th of June, 1905. I resigned the presidency of the Anaconda Company at the time of my election as president of the Amalgamated. I entirely forgot the controversy over the Ticon property, which I presume is the one that Senator Walsh had in mind when he questioned me. There has been a controversy between the Anaconda Company and Murray over the rights to ore bodies in the neighborhood of the Ticon claim that is owned by Mr. Murray and some of his associates. And that controversy has gotten into the courts in some form or other. I don't know whether the Anaconda Company has brought suit, or whether Murray has, but there has been some court proceedings over the rights to mine those ore bodies. That adjustment or those adjustments were made with the view of preventing controversies in the future more particularly. The companies controlled by the Amalgamated and the Heinze companies were involved in an endless mass of litigation, and when the litigation was dismissed all past claims were wiped out by the dismissal of the litigation, and shortly after that the adjustment was taken up by Boards of Engineers representing the several different companies, and so the adjustments made by these Boards were practically to settle existing differences and future differences, and prevent future differences. They had nothing ^{to do} ~~to do~~ with differences in the

past, because that had been wiped out by the dismissal of the litigation. The litigation that had previously existed interfered very greatly with the operations of the properties. A number of the largest and richest ore bodies in the district were standing idle and could not be worked on account of court injunctions and other ore bodies were not developed as they should be developed for fear of making development favorable to the other side. Generally it tied up a lot of mining property that was worked constantly from that time until the present. That litigation was very expensive in involving extensive geological work to ascertain the ore conditions. There was a great deal of development work done to prove rights and titles that was unnecessary, and it was very expensive. When these various companies had owned these contiguous properties, the object was to prevent those technical questions from arising in the future. I think unquestionably that the adjustment that was made at that time was advantageous to all of the companies concerned. At all of the times referred to in my testimony Mr. Cole was president of the Oliver Iron Mining Company, which is the mining organization of the United States Steel Corporation. He was largely interested in copper mines in Arizona, was a man of large means, and a very large mining operator. At the time of the formation of the Butte Coalition Mining Company, Mr. Cole had never been affiliated in any way with the Amalgamated

Company or any of its subsidiary properties. I don't know of my own knowledge what Mr. Congdon's means were or are, but by general repute he is a very rich man. I have heard it stated by well-informed people who lived in his city that he was probably the richest man in the State of Minnesota after James J. Hill. He has not and never had in any way been affiliated with the Amalgamated or any of its subsidiary companies. I spoke of an option that a man by the name of Wisner had on the majority of this Alice stock prior to my obtaining the option. I think he had it about three years, all told. I believe there was one and perhaps two renewals of his option. He spent a large amount of money in installing machinery to try out a zinc process. I say he spent it, the Montana Zinc Company, which was the company he organized for that purpose, built a plant for the treatment of zinc ores in the old Alice mill, and operated it for some little time unsuccessfully, and made no commercial success of the effort. It was after that had been abandoned that I obtained an option at the same price. My option was secured through negotiations with Matthew H. Walker and Mr. Farnsworth of Salt Lake City and O. K. Lewis, and I think two other gentlemen came to Butte to negotiate with me. They were in active direction of the affairs of the Alice Company practically from the time of its organization until they gave an option on the control of the property to me in 1905. I think the group who sold me the stock under that option or gave

me the option, represented the control of the Alice Company practically from the day of its organization. I think they so stated to me at the time they signed the option, that they were at all times in active direction of its affairs, and more familiar with the operations of the company than anyone else, excepting the mine officials who were doing the actual work, and they were under the direction of these gentlemen who gave me that option, and it was while they had charge of the company that the mine was closed and allowed to fill with water. It was about the time that the mine was closed down, as I have been told that Mr. Buzzo was placed in charge of the property; I did not live in Butte at the time and I cannot testify of my own knowledge. I think he had charge of the mine before it had filled up with water to any extent. I think he had a very good general knowledge of the lower levels of the mine. He told me of these large bodies of low grade iron zinc ore, what are called rebellious zinc ores, carrying some silver and gold, and that is all the information I had in regard to any zinc ores. I have never heard of any zinc ore in the Alice property, either in large bodies or in small ones, that has been susceptible of treatment by any process that would make them commercial today. I never have heard of any ores that differed in character from those that Mr. Wissner attempted to treat. Since the time that the transfer of the property to the Anaconda Company has been made, two examinations of the mines and extensive sampling in both cases, have

been made by the New Jersey people representing the Empire Zinc Company, and the others representing Beer Sondheimer & Company, the latter company large operators of zinc properties, large producers of zinc in Europe. Both of these examinations were made at the request of these people who wanted to see if they could do anything with the Alice ores. They both reported unfavorably, and dropped all negotiations which were pending to give them a lease on the property. We tried to induce practical zinc people to take a lease on the property and to develop it by the use of some method of extraction that they might bring to bear, but we have never been able to. I think these efforts were made about two years ago. I have no information at all which leads me to think that there is any known or possible process in the future by which those refractory zinc ores could be worked profitably. I have nothing but a hope. I have no knowledge whatever that some process may be discovered in the future, and I do not believe that any known process exists that would treat those ores at a reasonable cost, and make them commercially available. I hope that in the future such a process will be found, but as far as we know now there is none. In my circular letter to the stockholders of the Alice Gold & Silver Mining Company marked Complainants' Exhibit B, this statement is made: "You are therefore advised that in the opinion of the management, it would be to the best interests of this Company and its shareholders to accept the proposi-

tion of the Anaconda Copper Mining Company." That was my opinion at the time that circular was sent out, and it is now and has been ever since, and I have never had reason to change it in the least. I have never had any information in regard to the property that would cause me to modify that in the least. Well, I should say the Badger State Mine is a thousand feet away from the Alice properties. The Badger State claim I should say would be about one thousand feet from the Alice properties, but the Badger State workings more than that, probably two thousand feet from the Alice properties. There was an entirely different character of ore there. The ores opened in the Badger State are not zinc ores; they are copper ores with some little zinc, but copper ores running high in silver. The Lexington properties adjoining the Alice properties on the south have been worked extensively by the LaFrance Company or one of Heinze's companies within the last four or five years. That lies between the Alice properties, and the copper-producing properties on the western end of the Camp. It is almost directly south of the Alice properties, southeast of some of them; southwest of others. It is practically contiguous to the Alice property. The Lexington properties have been worked to a depth of about fifteen hundred feet, about the same depth that the Alice properties were developed, and produced much the same class of ore, a little more copper than was ever found in the Alice properties, because it is nearer to the copper belt, and the ore

carries a little more copper. The Lexington property has produced as much profit as the Alice during the years it was operated, but after being closed down in the nineties, it was unwatered and operated by Heinze or one of his companies rather extensively in the last four or five years. They built a mill, a zinc extraction mill, on the property at a considerable cost, stated to be over three hundred thousand dollars, and it was an utter failure, as far as I have learned from general reports, at least the mill was closed, and the mine was closed, and allowed to fill with water, and was sold at a foreclosure sale for \$250,000, mill, mine, surface plant and everything else. I bought for the Anaconda Company from the people who bought it at foreclosure sale, the stock of the Atlantic Mines Company, which company was organized to take over the Lexington properties, and all of them, and that company on its organization had \$250,000 placed in its treasury, which remained intact up to the time I bought it, and in fact, still remains intact. I paid for about eighty per cent of the stock of that company on the basis of \$600,000 for the company; deducting the \$250,000 cash in the treasury of the company would show that it was sold on the basis of \$350,000 for the property. It was bought in at foreclosure for \$250,000 at public auction. The area of that property is about thirty-five acres. I think the Alice property is 125 or 130 acres, but the area of the Alice workings and the area of the Lexington workings are about the same. As to the general geological and mineralogical condi-

tions there in the Lexington as compared with the Alice, I should say they are more nearly alike than any other two properties in the Butte Camp that are idle. Inasmuch as it is nearer the copper producing territory and more likely to get sufficient copper in its ore to make a profit, I would say the advantages were in favor of the Lexington. As a matter of fact, in this general consolidation of the properties in 1910, the Anaconda Company acquired the Badger State, Moose and a number of Butte and Boston properties that were immediately adjacent to the Alice property. It was the intention of the management of the Anaconda Company at the time of that consolidation, one of the reasons for that consolidation was the better opportunity it gave to develop adjoining properties at comparatively low cost. This was true of the Alice property. It was filled with water. It could be unwatered very much more economically through the Anaconda property by the use of the diamond drills, and drop the water off to their main pumping stations and the veins in the Alice property could be reached at depth at a very much lower cost by extending crosscuts and drifts that could be extended from the Badger State, the Moose or other properties that might be working in that vicinity. As an officer and director of the Alice Company I considered for several years the possibility of development of that property. I never was able to give any reason why anybody should loan a sufficient amount of money to do a reasonable amount of development work on that

property, because we had nothing to offer as a reason for the spending of that money, but the hope that it might result in the development of ore bodies that would pay. We did not know of any. It was nothing but an absolutely pure speculative hope. I never felt that I wanted to recommend to anyone that he should loan us or any institution that it loan us any amount of money requisite to develop that property on such a speculative hope. If it turned out badly it might ruin any man's reputation for having recommended it. From the knowledge that I had, I would not have advised any of my friends to acquire any bonds that might have been issued by that company. But on the other hand I felt that the Anaconda Company, with the ownership and development of adjacent properties, with its large resources, was well justified in paying the sum that was represented by these thirty thousand shares of capital stock, in that speculative hope of finding something there at greater depths, because the Anaconda Company had the means and had the opportunity for cheaper development than anyone else, and could well afford to take the gamble that was involved. That matter came up only in connection with the general consolidation, because the Anaconda Company had no properties through which it could reach the Alice property until that consolidation was effected, and the Butte and Boston and Boston and Montana properties were acquired. If the Anaconda Company had not acquired the Boston and Montana and Butte and

Boston properties adjacent to the Alice properties, I would not have felt at all like recommending the payment of thirty thousand shares of its capital stock for the Alice properties. The Amalgamated Copper Company or any of its directors or officers or persons connected with it, or any director or officer or person connected with the Anaconda Company, including myself, absolutely did not have any information about the Alice properties which was not disclosed to the stockholders of the Alice Company at the time of this conveyance in 1910. All the knowledge anyone had of the Alice properties was that of general knowledge, general information that was common rumor, common gossip in the camp for twenty years as to what was in the Alice mine when it closed down. I obtained no information that was not generally known to everybody, and known to the stockholders, if they cared to even keep track of common rumors. At the time of this consolidation of the properties in 1910, the capital stock of the Anaconda Company was increased for the purpose of paying for the properties taken in by these other companies from one million, two hundred thousand shares to six million shares, and the properties of all those other companies, including the property of the Alice Company were acquired at that time, and the stock was issued at that time, and is now outstanding. It has been listed on the New York Stock Exchange. The Anaconda stock is quite active. There are transactions in it nearly every day, some days several thousand

shares. Since 1910 a great many thousand shares of that stock have been dealt in on the New York Stock Exchange, and the stockholders have been continually changing during that period, and that stock was listed on representations to the Committee of the Stock Exchange that these properties, including the Alice property had been acquired, and the amount of stock that had been issued in their acquisition, and undoubtedly the dealings in the Stock Exchange and the investments by the public generally in that stock have been on the basis of these properties that were acquired at that time including the Alice properties. This building at 42 Broadway is very large. There are twenty or twenty-one floors. A great many other mining corporations and partnerships and business enterprises are in this building.

Direct Examination Continued by Mr. Walsh:

I don't think I testified that the Amalgamated itself became a stockholder in the Butte Coalition. I don't remember, but the Amalgamated did own fifty thousand shares of Butte Coalition stock. The total number of shares was one million. To the best of my recollection Mr. Rogers and Mr. Rockefeller took some stock in the Butte Coalition Company, but as far as I can recall, I don't know any other directors of the Amalgamated who did, or any officers of the company who did, unless it might be Mr. Addicks. I think Mr. Addicks took some stock. I do not remember about how much was taken. I don't remember whether Mr. Melin did or not. I think probably he did. No, I am

quite sure Mr. Burrage did not. The Mr. Rockefeller I refer to is William Rockefeller. I am quite sure that Mr. John D. Rockefeller did not become a stockholder, and I never had any business with him; I am quite sure that he was not a stockholder. Mr. W. M. Rockefeller I think must be William Rockefeller; it is the abbreviation for William. Percy Rockefeller is William Rockefeller's son. To my knowledge he did not become a stockholder in the Butte Coalition. I don't know Mr. Olcott. I don't think Mr. Stillman was a stockholder. I never knew of his being a stockholder. I don't know that Mr. Fowler was a stockholder. I don't think Mr. Church was. A number of officials, mine and smelter officials in Montana became stockholders in the Butte Coalition, but as far as the Executive officers or the directors of the company—I at that time was not a director of the Amalgamated—I can only recall Mr. Rogers and Mr. Rockefeller and Mr. Addicks; possibly Mr. Melin. I think Mr. Rogers was the director of the United States Steel at that time. I do not think Mr. Rockefeller was ever a director of the United States Steel, I have no knowledge of that. That is only my impression. I think Mr. Congdon was a lawyer, but he is not in active practice, as I understand it. I think his principal business is mining and leasing iron ore lands, I think that has been his principal business for years. He and Mr. Cole were rather closely associated up there at Duluth. At the time this circular letter of April 27th, sent to the Alice stock-

holders, it was not free from debt at the time that I took this option on the property. The Alice Company owed about \$25,000, and I remember distinctly that at the time I took the option I made a condition that up to the time that the option would expire the debt of the company should not be increased to over \$30,000. When I took the option the debt was about \$25,000, owing to Walker Brothers of Salt Lake City on notes of the Company and an overdraft in their bank. I don't know that there was any office maintained in Butte. Mr. Buzzo and after Mr. Buzzo died, his son, who succeeded him, looked after the leases. He had a mine office in an old building on the property there. The only duty that Mr. Buzzo had was to look after the property and to collect the royalty from the lessors. I don't recall the year the mill burned down. I think it was during the year after the option under which I acquired stock was exercised. Mr. Buzzo's salary and the salary of a watchman, I think, would be the only expense. There was some expense entailed in connection with keeping the shaft open, keeping the hoist working to hoist ore that the lessors were producing from the upper levels. I think that was taken care of by the royalties. Undoubtedly, the lessors pay for the hoisting, but the shaft had to be kept in shape, and I don't know what that expense was. There would be some expense, not anything very great. The expense of the office here in New York was practically nothing, about \$1900, it would not be anything

large. Well, I imagine it would take a good part of that just to look after the routine reports and statements from the company and send out the notices to the stockholders of meetings and carry on the corporate business. I do not know what the relationship of Mr. M. H. Walker and Joseph R. Walker is. They are related, I am quite sure, but I don't know the different members of the Walker family and what their relationship is. I thought Mat Walker was an uncle of J. R. Walker, but I am not sure. I made the contract or option with Mr. Mat Walker practically. He had three, perhaps four other gentlemen with him who came to Butte on that business. They were all representing large interests in the stock. I cannot find that option now. I have been looking for it since, and I cannot find it. I don't know when the Alice Company ceased operations; somewhere in the nineties. They operated very little as I understand it, as I have been told, very little after 1894. They did a little work in 1896, 1897 or 1898 but nothing of any account. Thereafter Mr. Buzzo was in charge for the Alice Company. I don't know that he was a mining engineer; he was a mining man of wide experience, a mining manager of wide experience. One examination of the property was made by the engineers representing the Empire Zinc Company, which is, as I understand it, a subsidiary of the New Jersey Zinc Company, one of the largest producers and marketers of zinc in this country. The other was representatives of Beer, Sondheim & Company,

which is a firm,—a German concern—with offices in New York. This examination was made by them within the last three years, some time subsequent to the transfer of the Alice properties to the Anaconda Company. They were looking for zinc properties and had heard that the Alice contained a large body of zinc ore, and they wanted to sample it and investigate it, and see whether they thought they could make it commercially available. They were anxious to produce the zinc. We offered in both cases to give a lease of the ore bodies to whoever would take it and develop a process that would work the ore. We were anxious to develop the mine, and get some process that would make the ore available commercially. I talked with some of the New Jersey zinc people here before they sent their representatives out to make the examination, and also with the men in charge of Beer, Sondheimer & Company's business here. The representatives reported to Mr. Gillie in the West, and the examination was made by them. The examination was made for themselves. They made no report whatever to us, excepting to say that the ores were not such as they could successfully treat, and they were not interested in any further negotiations for a lease on the property. I do not think I had any correspondence with them in relation to leasing the property. It may be that Mr. Gillie had some correspondence after the engineers left the West, but my interviews with them were all verbal. As expressed in the letter of April 27th, it was my view that

the sale was in the interest of the stockholders of the Alice Gold and Silver Mining Company, and that is correct, and it is also correct that at the same time I thought the purchase was in the interest of the Anaconda stockholders. I think the sinking of the shaft on the Badger State was begun sometime in 1906 or 1907 I don't remember distinctly. That is about the time. It has been sunk continuously since the beginning of the operations. We have never stopped for more than a few months to get the work squared away; the sinking has been pursued with diligence ever since that time. We were anxious to get as great depth as possible. We went down to the 2,000 where we are now. There has been no interruption of sinking operations. That is the ordinary hoist for a producing mine of that size in the camp. It is one of the second class. It is not as large a hoist as there is on a number of other mines in Butte. There is a larger one on the Leonard, the Mountain View, I think, High Ore, Diamond. I may not be exact in that. There is a new hoist placed on the Badger State within the last few months. I think it is just about in operation now. It was not in operation when I was in Butte in September. The one we began operating with hoisting ore in 1910 was a small hoist, taken off of one of the other properties, because it would not hoist from the depth that the other property had attained. It was a small hoist moved over to the Badger State. There has never been a complete modern hoist on the Badger State until within the

last few months. The hoist in operation up to that time was one that had been in use for years on some other property and moved over there, because it had not sufficient capacity on the property it was taken off of. The Lexington was one of the Heinze properties at the time that I made the purchase; however, that was not taken over at that time. I talked to Mr. Heinze about it, and he was unable to sell the Lexington property because it was under a mortgage securing the LaFrance bonds and he could not dispose of the Lexington property at any reasonable price, because he would have had to pay into the trustee of the mortgage more than he could have realized for the Lexington properties. We would have been willing to have acquired it at that time at some price, but it was found impracticable to be done. I did not arrive at the amount of Anaconda stock to which the subsidiary companies should be entitled. The negotiations were carried on by the committee representing the different companies. These committees reached a basis of valuation in Anaconda stock for the different properties. The Boston and Montana received one million, two hundred thousand shares of the Anaconda stock. That valuation was arrived at by the committee that was appointed representing the Boston and Montana, and the committee that was appointed, representing the Anaconda, working in connection with the committees representing all of the other companies; for the reason that if the Boston and Montana received one million, two hundred

thousand, and let us say that that was in excess of the amount which it was fairly entitled to, the Washoe shareholder would insist upon the amount being put at such figure that he was getting his fair share of the total property in Anaconda stock. Naturally in arriving at that, some valuation was put upon the various properties entering into the transaction. That was what would determine the amount of stock that each company would get for its property, the valuation of the property. I don't know at what valuation the Badger State or the Moose went into that. I don't think there is any record of that, and I don't think any definite particular valuation was put on each mining claim. To the best of my recollection, these committees conferred with one another, took production and record and all those things, but did not value each separate mining claim. With reference to the occupancy of this building by our companies, we are now on the 20th floor of this building. The Amalgamated Company has a large part of the floor, the President's office of the Anaconda Company is on this floor; the International Smelting and Refining Company, the Green Cananea Copper Company, the Hedly Gold Mining Company, are all on the 20th floor that I can remember. The Hedly Gold Mining Company operating a mine in British Columbia. I hold some stock in it. At the time that it was dissolved, the office of the Butte Coalition was on this same floor; also the Alice Gold Mining Company.

MR. WALSH: We will have to wait for some original letters and exhibits, and ask to examine Mr. Ryan further when he comes.

Cross Examination.

Walker Bros., from whom he obtained this option, were the active men in the Alice Company and bankers as well. The Alice Company owed about \$25,000 to Walkers Bros. That was paid off by the Butte Coalition Company at the time it made the purchase of the control of the stock. Beer, Sondheimer & Company are a very large German metal concern,—I think one of the largest in the world, and the New Jersey Zinc Company, I think, is the largest zinc company in this country.

Redirect Examination.

I am quite sure that I would recognize Mr. Buzzo's signature, if I saw it. The letter dated January 16, 1901, marked Complainants' Exhibit V bears the signature of Mr. Buzzo.

MR. WALSH: We offer that in evidence.

MR. GARVER: That is objected to as irrelevant, incompetent and immaterial, and on no possible ground can it be binding as against these defendants.

MR. WALSH: We will offer these and insist upon their admissibility on two grounds: First, as the admissions of the agent of the predecessor in interest of the defendant made in the course of the discharge of his duties; second, as the declarations of one in possession of real estate in relation to the property.

I am quite sure that the signature to complainants' Exhibit W is in the handwriting of Mr. Buzzo.

MR. WALSH: I offer that also. Complainants' Exhibit X likewise bears the signature of Mr. Buzzo.

MR. WALSH: We offer that in evidence. Exhibit Y is in the handwriting of Mr. Buzzo.

MR. WALSH: We offer that in evidence.

MR. GARVER: These are all objected to.

Exhibit Z, I think is in Mr. Buzzo's handwriting and signature.

MR. WALSH: We offer this in evidence.

MR. GARVER: Same objection.

Each of the foregoing exhibits, marked Complainants' exhibit V, W, X and Y respectively, were separately objected to by the defendants for the reason that they, and each of them, were incompetent, irrelevant, immaterial and hearsay, and that they, and each of them, were simply representations or declarations from Mr. Buzzo, an employee of the Alice Company, to an officer of the Company not in any way connected with the Anaconda or any of the other defendants in this action, and not in any way binding upon the Anaconda Company, or any of the other defendants in this action; and that neither they or any of them contain a declaration against the interests of the Alice Gold & Silver Mining Company, and that neither they or either of them contain declarations against the interest of either Mr. Buzzo or the Alice Gold & Silver Mining Company, and that neither they or either of them contain a declara-

tion against the title or possession, or any such declaration against the property, which would be admitted under the rule as to competency, of declarations of predecessors or ancestors in title.

Whereupon, as to each of said objections, the court ruled as follows: "I doubt if they are competent for any other reason. They are reports from an agent, a superintendent, to his superior, self-serving, and they are being endeavored to be used here for the benefit of the company. I will follow the usual rule, however: for the present, I will overrule the objection pro forma. If we find before the case terminates here that they should not be admitted, it will save the necessity of your putting in the proof which might otherwise be necessary."

To which ruling of the court, the defendants, and each of them, then and there excepted.

Q. Mr. Ryan, I wanted to question you particularly about the statement in this letter of May 14th, 1901, in which Mr. Buzzo says: "The ore in the sample I sent Mr. Robinson was taken from the six hundred, five hundred, four hundred, and three hundred foot levels of the Alice, as the water is up to the 700 foot level I did not get any samples below the 600, nor did I get into where there is ore of a higher grade, say, running up to as high as fifteen ounces, and two dollars in gold, owing to the levels being caved down. However, I am satisfied from my knowledge of the property, that with the reopening of some of the levels, the great body of base ore in the north vein will aver-

age twelve ounces in silver, and two dollars in gold per ton, and from one-half to one per cent of copper, two to five per cent lead and eighteen per cent zinc per ton." And to the following "The assays I gave of the lower grade ore above would in my judgment apply to the following reserves of ore developing in the company's properties, namely, in the Alice North Lode above the one thousand level, seven hundred thousand tons, from the one thousand to the fifteen hundred foot level, three hundred and fifty thousand tons, from the Magna Charta south lodes above the seven hundred, three hundred thousand tons, from the Magnolia Lode, fifty thousands tons, in the Blue Wing Lode, fifty thousand tons, in the Rising Star, twenty-five thousand tons, in the Paymaster, twenty-five thousand tons; total, one million, five hundred thousand tons." And to inquire of you whether Mr. Buzzo, in the course of your conversation with him gave you substantially that information concerning the property? A. He said to me that there was a very large tonnage of ore about that grade, which was not commercial ore, and could not be treated commercially by any known process. The values, if that ore ever could be looked upon as having real value at all, was entirely in the silver. The lead is of a lower percentage than any smelter would pay for.

As to how the work is progressing, the Moose shaft is being sunk. I don't know to what depth we have gone. I think somewhere about four

hundred. We cleaned out the old shaft and re-timbered it, and I think enlarged the size, and then started sinking. I don't know whether that is sunk on the same vein as the Badger State. The shaft is not sunk on any vein; the shaft is a perpendicular shaft sunk, intending to intercept veins by cross-cuts. As I said, I don't want to testify to the veins in the section. I don't consider my knowledge is sufficient to enable me to. No, our engineers did not make any report preparatory to undertaking that work on the Moose with respect to the advisability of pursuing work. I talked with Mr. Thayer about it after one of his visits to Montana. That was the only report that I had. I don't think there was any report made. I think Mr. Thayer decided upon doing exploratory work through the Moose shaft by sinking it, and cross-cutting from it. That is, he went on the ground and conferred with the engineers, after conferring with the engineers of the company. To my knowledge, it is not correct that I brought action against the Pilot Butte. I did not know that any action had been brought against the Pilot Butte. I think the Pilot Butte is the owner of the Pilot claim. The Anaconda Company owns the Emily immediately to the south.

Recross Examination:

These letters signed by Mr. Buzzo which have been offered in evidence today were all written in 1901, were written to Mr. Walker from whom I obtained the option and who negotiated the terms of the option and the

subsequent sale of the stock to me. That option was the first or second of September, 1905. The option to Mr. Wizner was subsequent to 1901, and it expired just before the option to me was given. That was also an option which included the stock of M. H. Walker and his associates, making up the controlling interest in the company. I rather think Mr. Buzzo himself owned stock of that company. I would not be certain enough to testify to that. I have a faint recollection that Mr. Buzzo asked to include his stock in the option, but I am not positive as to that. I told Mr. Buzzo when he gave me practically these assays, gave me the average assays of the ores, as he had them, that there was not sufficient lead in the ores so that any smelter could make use of it or could extract it; that there was not any zinc process known, that would extract that percentage of zinc from that composition of an ore at any profit, and the only metal that would have any value, or rather that could be extracted at all, that would have any value, would be the silver, and twelve ounce ore at that time was worth something under six dollars a ton, which would not commence to pay for mining and smelting, and hence there could not be any possible profit in those reserves, as he called them at that time, and the only hope for profit would be the development of some process that was unknown at that time. Mr. Buzzo told me of all of these negotiations that they had with exploiters of zinc processes. He told me they raked and scraped every corner of the

world for a zinc process that would treat the Alice ores. He had absolute faith that such a process would be found some day, but admitted that at that time there was no such process, and the ores could not be treated commercially.

Re-Direct Examination:

This firm of Beer, Sondheimer & Company has an office in this building, 42 Broadway. I don't know what floor. I have never been in their office. I know they are in this building, because I have seen their representatives here from time to time. I am quite sure they are operators of zinc properties, because they have in connection with these Alice negotiations, they told us of zinc experiments in the treatment of zinc ores, and they wanted their engineers to have the opportunity of determining the composition of the Alice ores, to see whether these processes could be used on them. I don't know where their mines are. I remember their representative telling me some time ago of their having spent a very large sum of money, running into the hundreds of thousands of dollars, in Germany and Sweden, in an attempt to smelt zinc ores in electric furnaces. I think they do purchase zinc ores—I mean, they purchase zinc concentrates, I think, and smelt them. No, I do not think they have a smelter, but I think their principal business is the purchasing of concentrates, and the treatment. I do not know of any zinc mines in this country that they operate. The other day I spoke of the Empire Zinc Company. They are operating zinc mines in several

sections in Colorado that I know of. I don't know what other sections. As I understand it, the Empire Company is a subsidiary company of the New Jersey Zinc Company, which is probably the largest zinc concern in this country.

(Witness Excused.)

The exhibits hereinbefore referred to in the testimony of witness Ryan are as follows:

Complainants' Exhibit A.

ANACONDA COPPER MINING COMPANY

BADGER STATE MINE

PRODUCTION OF COPPER, SILVER AND GOLD

	Wet Weight (Tons)	Dry Weight (Tons)	Copper Lbs.
1910			
June 1st to December 31st	20,016	19,442	1,310,431
1911			
Year ending December 31st	129,306	126,459	6,079,005
1912			
Year ending December 31st	205,337	201,068	10,135,197
1913			
Six months ending June 30th	103,007	101,152	4,417,555
	<hr/>	<hr/>	<hr/>
Total.....	457,666	448,121	21,942,188
1910			

Silver ozs. Gold ozs.

June 1st to
Decem-

ber 31st ..	80,149	78-100ths	185	559-1000ths
1911				
Year ending				
Decem-				
ber 31st ..	411,367	10-100ths	816	924-1000ths
1912				
Year ending				
Decem-				
ber 31st ..	687,308	98-100ths	1,178	277-1000ths
1913				
Six months				
ending June				
30th	319,406	13-100ths	539	511-1000ths
Total.....	1,498,231	99-100ths	2,720	271-1000ths

Complainants' Exhibit B.

New York City, New York, April 27, 1910.
To the Stockholders of the Alice Gold & Silver
Mining Company:

You are advised that a special meeting of the stockholders of the Company has been called to meet at the principal office of the Company, in the Utah Savings & Trust Building, Salt Lake City, Utah, on Friday, the 27th day of May, 1910, at the hour of 10 o'clock A. M.

The purpose of the meeting is to submit to the consideration of the stockholders, and to have them pass upon, a proposed contract of sale between the Company and the Anaconda Copper Mining Company of Montana. The proposition, if approved by the holders of the necessary amount of the capital stock of the Company, will result in the

sale and transfer of all of the property and assets of the Company to the Anaconda Copper Mining Company, in consideration of the issuance and payment by the latter Company of 30,000 shares of the full paid capital stock of said Company.

In submitting this proposition to the stockholders, and advising its acceptance, the management wishes to state that the Alice Gold & Silver Mining Company was incorporated under the laws of Utah on the 16th day of March, 1880, with a capital stock of \$10,000,000.00, divided into 400,000 shares, having a par value \$25.00 each all of which said stock was issued in acquiring certain mining properties near Walkerville, in the County of Silver Bow, State of Montana.

The mines of the Company were operated actively from 1880 until 1893, and afterwards for a short period during the years 1897 and 1898. The total dividends which were paid from March 15, 1881, to March 15, 1898, amounted to \$1,075,000.00.

During the period of active operation silver was the chief product of the Company. During the year 1893, because of the marked decline in the market price of silver and the lean values of the ores which were developed in the lower levels of the Company's mines, it became necessary to close down its property, and practically no operations have since been conducted by the Company and no revenues have been received except a comparatively small sum realized from the royalties paid by lessees working in certain portions of the older levels of the mines. As a result of closing down

the mines of the Company the same filled with water up to the 700 foot level, and the workings between that level and the 1500 level have been and now are inaccessible.

A balance Sheet showing the condition of the Company on March 31, 1910, and a Profit and Loss Account, showing the result of such operations as have been conducted by the present management, are attached hereto and marked respectively Exhibits A and B.

In 1906 the Butte Coalition Mining Company acquired by purchase from the former owners a majority of the stock of the Company.

The market price of silver, taken in connection with the low grade of the ores exposed, has been such that the mines of the Company could not be worked at a profit, and in view of the depleted condition of the treasury of the Company the management has not felt justified in endeavoring to carry out any extensive system of prospecting or development work.

Recently the stockholders of other companies, to-wit: the Boston and Montana Consolidated Copper and Silver Mining Company, Washoe Copper Company, Big Blackfoot Lumber Company, Butte & Boston Consolidated Mining Company, Trenton Mining & Development Company, Red Metal Mining Company, Diamond Coal & Coke Company, and Parrot Silver & Copper Company, have taken steps to effect a consolidation of all the property owned by them, by a sale of their respective properties to the Anaconda Copper Mining Company,

for certain amounts of the capital stock of the Anaconda Copper Mining Company, and the last named Company, in pursuance of the same general plan, has offered to purchase all of the property of this Company, paying therefor 30,000 shares of the capital stock of the Anaconda Copper Mining Company.

By the consolidation above referred to the Anaconda Copper Mining Company has acquired the most important mining ground in the Butte District, and it is believed that it will be enabled, through the adoption of general systems of drainage, ventilation and development, to prospect in an economical manner the undeveloped portion of the property thus acquired.

This Company is the owner of comparatively large areas of mining property which lie contiguous to some of the property belonging to the Anaconda Copper Mining Company, and which it is believed are of sufficient value to justify prospecting and development, provided the same can be carried on by a company strong enough financially to berden of so doing.

In addition to the cost which the resumption of active mining operations would entail, you are advised that it would be necessary to construct and equip new mills or reduction works of modern design and suitable character to handle the ores of the Company economically, provided such ores were encountered in sufficient quantity to justify the continuance of mining operations. Such action would require the expenditure of

large sums of money, at present unavailable.

You are therefore advised that in the opinion of the management it would be to the best interests of this Company and its shareholders to accept the proposition of the Anaconda Copper Mining Company.

You are therefore requested to sign the accompanying proxy and return it in the enclosed envelope whether you expect to be present at the meeting or not, in order that the stock owned by you may be represented and voted at the special meeting of the stockholders.

Very respectfully,

JOHN D. RYAN,

J. W. ALLEN,

W. D. THORNTON,

A. C. CARSON,

E. S. FERRY,

Board of Directors.

Exhibit A.

ALICE GOLD AND SILVER MINING COMPANY.

BALANCE SHEET, DECEMBER 31ST, 1909.

ASSETS.

FIXED:

Mines and Mining,
Claims, Buildings
and Machinery,
etc.:

Balance March 31st

1906 (equal to

Capital Stock per

contra)\$10,000,00.00

Anaconda Copper Mining Co. et al. 447

Less recovered from

Insurance Com-
panies for Fire
Loss in 1906 and
proceeds of Sale
of Old Machin-
ery and material..

18,056.90

9,981,943.10

DEFERRED:

Supplies on hand

\$113.37

Insurance unex-
pired

141.49

254.86

CURRENT:

Accounts receivable..

\$235.76

Cash in Bank

2,482.28

2,718.04

\$9,984,916.00

LIABILITIES.

CAPITAL STOCK:

Authorized and is-
sued-400,000 shares
of \$25 each—.....

\$10,000,000.00

CURRENT:

Butte Coalition Min-
ing Company

34,101.56

DEFICIT:

Balance March 31st,
1906

\$27,784.75

Add Loss for the
three years and

nine months ending		
December		
31st, 1909, per		
Profit and Loss		
account annexed	21,400.81	
	<hr/>	49,185.56
		<hr/>
		\$9,984,916.00

We have examined into the affairs of the Alice Gold and Silver Mining Company and have verified the Assets, Liabilities and Losses shown above.

We hereby certify that this Balance Sheet shows the financial condition of the Company at December 31st, 1909, and that the annexed Profit and Loss Account for the three years and nine months from April 1st, 1906, to December 31st, 1909, is correct.

New York and Butte, April 27th, 1910.

POGSON, PELOUBET & CO., Auditors.

Exhibit B.

**ALICE GOLD & SILVER MINING COMPANY.
PROFIT AND LOSS ACCOUNT FOR THE THREE
YEARS AND NINE MONTHS FROM APRIL
1ST, 1906, TO DECEMBER 31ST, 1909.**

Royalties	\$16,347.52
Miscellaneous Receipts ..	2,526.88
	<hr/>
	\$18,874.40

DEDUCT:

Western office expenses:

Salaries and Wages \$21,892.85

General Expenses and

Anaconda Copper Mining Co. et al. 449

Supplies	6,729.56	
Insurance	1,372.98	
Taxes	2,122.74	
Bad Debts	99.69	
	<hr/>	
	\$32,217.82	
Eastern Office Ex-		
penses	1,901.61	
Interest on borrowed		
money	6,155.78	
	<hr/>	
		40,275.21
		<hr/>
Loss for the three years and nine		
months ending December 31st,		
1909, carried to foregoing Bal-		
ance Sheet		\$21,400.81

Complainants' Exhibit C.

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, hereby make, constitute and appoint W. D. THORNTON, E. S. FERRY and C. F. KELLEY, or any one of them, or such person or persons as they, or a majority of them may substitute and appoint, attorneys and proxies for and in the name, place and stead of the undersigned, to vote upon the stock of the ALICE GOLD AND SILVER MINING COMPANY, a Utah corporation, according to the number of votes that the undersigned would be entitled to cast if then personally present, at a special meeting of the stockholders of the said company, to be held at its principal office in the Utah Savings & Trust Building, in the City of Salt Lake, Utah, on the 27th day of May, A.

D. 1910, at 10 o'clock A. M., and at all adjournments of said meeting, for the purposes for which said meeting has been called by resolution of the Board of Directors adopted on April 27th, A. D. 1910, namely:

First: For the purpose of considering the proposition of confirming and ratifying a contract of sale which has been entered into between the Alice Gold and Silver Mining Company and the Anaconda Copper Mining Company, a Montana corporation, under and by virtue of the terms and provisions of which it has been agreed to sell and dispose of all the property of every kind and character owned or possessed by the Alice Gold and Silver Mining Company to the said Anaconda Copper Mining Company, in consideration of the issuance and payment to the Alice Gold and Silver Mining Company of 30,000 shares of the full paid capital stock of the said Anaconda Copper Mining Company;

Second: For the transaction of any other business that may properly come before said meeting,

IN WITNESS WHEREOF, I hereunto set my hand and seal this — day of May, A. D. 1910.

Witness:

.....(L. S.)

Complainants' Exhibit V.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, Jan. 16th, 1901.

M. H. Walker, Esq.,

Anaconda Copper Mining Co. et al. 451
Vice Pres., Alice Gold & Silver Mining Co.,
Salt Lake City, Utah.

Dear Sir:—

I am in receipt of your favor of the 14th inst. You ask what are my ideas about sending a shipment of zinc ores to the Vulcan Smelting and Refining Co. of San Francisco for a test, I think the idea is a good one. We have a quantity of ore, in any desirable amount, to send to them for the purpose as soon as I hear from them in answer to my letter, written while I was in your city, to them. I am looking for their answer now any day. I send you by this mail their illustrated pamphlet, which came to this office while I was away. On reading it you will see that if they can do anything like what they claim, they can make an unqualified success in the smelting of our ores. I understand they do not claim to save the zinc, but the product would be a matte, consisting of iron, lead and copper, and the values in the ore of gold and silver. This product would be very saleable. In fact we could run the same over again and thereby raise its value, if we so desired. Another thing, this method of smelting would enable us to treat all our silicious ores for, say, not to exceed three dollars per ton, whereas we are now charged \$8.50 per ton by the Butte Sampling Works.

If this smelter can do what they claim, we can work all our ores, base and free, at a profit. And if a test on our base ore made by them is success-

ful, then we should with as little delay as possible negotiate for a furnace.

Our old mill of twenty stamps is admirably situated to be used for a smelter plant, as the cars run direct from the Alice shaft into it, and the big sixty stamp mill would not be disturbed.

In the foregoing we have not taken into account the saving of zinc in our ores, but this matter will soonest be brought about, probably, by the Sadtler Zinc Smelting Co., which in the spring intends to erect a zinc smelting works at Helena. They intend to start in on a small scale first, increasing afterwards according to the measure of success they obtain in treating the ores, so that probably before they could do us much good, it would be a year or eighteen months. All this is in case they are successful, but our condition is such that we want to take advantage of the first process or method that will put us upon a paying basis, and the quickest thing in sight on paper is the Vulcan smelting method, that is, supposing what they claim is true. Another thing, if the Vulcan method is all right and we were to adopt it, we would have something with which to stand the zinc people off if their charges were exorbitant. I am satisfied that no zinc works will be erected in this state of sufficient capacity to take what ore we could supply and what others would want to deliver to them, for several years at least. The tonnage of this base ore in the Alice is simply enormous, I have learned since I returned from your city from a reliable miner who worked on the 1300

and 1400 levels in the north vein, that the ore there was of the same size and character as it is from the 1000 up to the change from oxidized to the base ores, which is about at the 200 level.

We have our force repairing the station at the Magna Charta shaft on the 300 on both sides. The cave down was quite serious and if not attended to would have resulted seriously to the safety of the shaft. It will take all of this week to complete the job, but by about the middle of the week we can take two of the men and put them drifting with the machine drill in the Saukie vein on the 200.

The weather is fair for the winter, cool with casual snowstorms.

We are all well here, and hope the same is the case with yourself and family.

Yours truly,
(Signed) T. W. BUZZO,
Sup't.

Complainants' Exhibit W.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, May 14th, 1901.

J. R. Walker, Esq.,

Salt Lake City, Utah.

Dear Sir:—

Your favor of the tenth inst. was duly received and the matters therein carefully considered.

Regarding the assay of the contents of the sample of ore which I sent to Mr. T. G. Robinson of Room 610, No 10 Wall Street, New York, and which was made by C. Amory Stevens, it agrees

essentially with the results obtained by our assayer except as to silver and gold. Mr. Stevens makes the silver average 22 ounces and the gold \$1.00; our assayer obtained 8 ounces in silver and \$1.60 in gold. This checks up with our previous work by himself and other assayers. There must be some mistake in the results obtained by Mr. Stevens, as in all our base ores of this character, where the silver is as high as 22 ounces, the gold is invariably from \$3.50 to \$4.00. In any event, Mr. Stevens' gold is too low. It is barely possible that there might have been a little native silver in the sample, which carried up his figures, yet in the portion that we had assayed, taken from the same lot, only gave 8 ounces.

The ore in the sample I sent Mr. Robinson was taken from the 600, 500, 400 and 300 foot levels in the Alice. As the water is up to 700 foot level I didn't get any samples below the six hundred, nor did I get into where there is ore of a higher grade, say—running up to as high as 15 ounces and \$2.00 in gold, owing to the levels being caved down. However, I am satisfied from my knowledge of the property, that with the reopening of some of the levels the great body of base ore in the north vein will average 12 ounces in silver and \$2.00 in gold per ton, and from a half to one per cent copper, 2 to 5 per cent lead, and 18 per cent zinc per ton.

We have tributaries working in this base ore on the different levels between the 200 and the 600, who are working in richer streaks than the great

mass of ore, which averages 15 feet in width. These streaks of richer ore average from 6 inches to 3 feet in width, and yield ore going from 15 to 60 ounces in silver and from \$2.50 to \$10.00 in gold per ton. This quality of ore finds a ready market in Butte.

The assays I give of the lower grade ore above would, in my judgment, apply to the following reserves of ore developed in the Company's properties, namely:

In the Alice North Lode above the 1000

level	700,000 tons;
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From the 1000 to the 1500 foot level.....	350,000 " :
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In the Magna Charta South Lodes,

Above the 700	300,000 " :
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In the Magnolia Lode	50,000 " :
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In the Blue Wing Lode.....	50,000 " :
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In the Rising Star	25,000 " :
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In the Paymaster	25,000 " :
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Total.....	1,500,000 tons.
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If desirable, I will send another sample to Mr. Robinson, taken from the mine, so that Mr. Stevens can check against the first sample.

As to the expense of mining the ore and delivering it to either of our mills; it can be done for \$1.50 to \$2.00 per ton, but in our estimates we always calculate at \$2.00 per ton so as to be on the safe side, and provide for the expense of keeping open the mine in good shape. Of course, the intrinsic value of the metals in the ore is ample, if they can be extracted economically, for great profits, and it

seems to be a question for the skillful metallurgist to cope with.

I hope that Mr. Stevens will be able to accomplish the results which he feels confident he can, in the extraction of the values in this ore, and at such a low cost, for it certainly would please at once the Alice on a paying basis that would last uninterruptedly for over twenty-five years, according to the ore now in sight and the prospects ahead.

Yours truly,

(Signed) T. W. BUZZO,

Sup't.

Complainants' Exhibit X.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, May 14, 1901.

J. R. Walker, Esq.,

Salt Lake City, Utah.

Dear Sir:—

Replying to your favor of the 10th, I thought it better to address you the letter inclosed, which you can have copied and sent to Mr. Robinson. I thought it best, perhaps, under the circumstances, for this letter to go to you instead of direct from me to Mr. Robinson.

You will observe that I have called attention in the letter to the evident mistake of Mr. Stevens' assay in the gold and silver obtained from the sample I sent to Mr. Robinson. His other assays average up about right, that is, on the zinc, lead and copper.

I hope Mr. Stevens can accomplish one half,

even, of what he thinks he can. I am afraid he is very much mistaken. But at the same time, I hope he is not; for if he is not, it means great wealth to the Alice Company.

By all means we must keep these people investigating, for I firmly believe some chemist will be found yet who will be able to solve the question, if not wholly, sufficiently so at least to lift us out of trouble. Would it not be well for me to send another sample to Mr. Robinson? Everything here is moving along as usual.

Yours truly,

(Signed) T. W. BUZZO.

Sup't.

Send the copy to Mr. Robinson and leave out anything you wish omitted.

Complainants' Exhibit Y.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, June 26, 1901.

M. H. Walker, Esq.,

Pres. Alice Mining Co.,

Salt Lake City, Utah.

Dear Sir:—

We have been having a great deal of rain and stormy weather. It has cleared up cold. In the past three days a good deal of snow has fallen on the mountains.

Since my return from Salt Lake, I have been very busy and I have so much to do, that it will be impossible for me to leave for Salt Lake to see Mr. Bemis before the 5th of July. Returns from eight cars of ore shipped nearly two months since to

the Everett Smelter at Wash. are just received, and also other returns from the Butte Sampling Works are at hand, all these I have to figure out to make settlements with the tributers, and besides our tributers are crowding their shipments to the Butte Sampling Works in order to get spending money for the 4th of July. So you see I shall be very busy up to the 4th, and on the 4th of July I always make it a point to remain on the Company's property in order to be on the look out for fire or trespass caused by drunken hoboos or evil disposed boys.

The day before yesterday I met ex-Governor Spriggs at the Butte Hotel. He is interested with Sadtler in the proposed zinc smelter for Montana, and says that three months ago they had a syndicate about formed in N. Y. to carry on the business of zinc smelting in this state, but a drop of 2c per pound in zinc occurring at that time upset their plans and caused a postponement until better price for zinc should prevail. Governor Spriggs said what they seemed to lack was a sufficient quantity of ore in Montana to back up a zinc smelter.

I told him that the Alice properties had more zinc ore of from 16 to 20 per cent exposed than any other concern in the world, that I knew of. And that if all the Alice veins were worked for zinc, it would be no trouble to secure an output of 2000 tons per day. This statement astonished the Governor. He said it would cost \$12.00 per ton to treat the ores and get all the values out or

nearly all. I showed him that the average minimum value of our ores were not less than \$24.00 per ton counting all the metals and that it was more likely to go higher. He said their concern ought to have a property like the Alice back of it for a back-bone, and he asked me who they could correspond with, with the view of working up a deal. I replied that yourself as president of the Company at Salt Lake would be the party to address on the subject. He said he would write Prof. Sadtler, who would undoubtedly communicate with you.

Yours truly,
(Signed) T. W. BUZZO,

Sup'l.

Complainants' Exhibit Z.

ALICE GOLD & SILVER MINING COMPANY.

Walkerville, Montana, June 30, 1901.

M. H. Walker, Esq.,

Pres. Alice G. & S. M'g Co.,

Salt Lake City.

Dear Sir:—

I have carefully read your favor of the 27th. We shall have our house in order to receive your New York friends, yourself and director J. R. Walker. I shall be very much pleased if you and J. R. W. come with the gentlemen or meet them here. Of course, we cant get in to see so much of the base ore on the north vein of the Alice as we would like to show or could show if the levels were all open, but on the 600, 500 and 400 levels they can see enough to arrive at an idea of what we

have, and surely ought to satisfy them. Then there is the Magna Charta and other places to look at. We surely can satisfy the visitors as to quantity with what they can see here now and learn from the miners who have worked in the deeper levels, which have been under water since I have been here.

A question of Great importance also, is making available the vast bodies of oxidized ore which we have, of which there is such a vast amount opened up in the south veins between the Alice hoist and the big mill. Of course this would be a different proposition from the treatment of the base ores, and while here you could interview Metallurgist G. B. Jacobs of whom I wrote you on the 27th and who says he can treat these oxidized ores at a profit where they have a value of \$4 to \$5 in silver and gold per ton. He claims he has had successful experience and has also tested the oxidized ores of this district. It may be well worth your while to meet him.

We have two mills, one of which perhaps, could be given up to the treatment of oxidized ores. If nothing came of the interview with Jacobs, I believe it would be a good idea to send Butlers & Company some samples of our oxidized ores to test, for a leaching process.

Of course, we would like some process, that would give us temporary help at least, concentration by water if successful with any of our ores, would be very wasteful as there would be more silver and gold carried away in the tailings than

we would save—but even this we might stand for awhile to keep agoing and opening up. Your visit here would be very desirable, not forgetting to have Rob come with you, as he is alive on these subjects and so deeply interested.

The weather is so cool that we have steam heat on in the office as I write.

Yours truly,
(Signed) T. W. BUZZO,
Sup't.

[Testimony of A. H. Melin, for Complainants.]

Deposition of A. H. MELIN, a witness called in behalf of the complainants being by the Commissioner duly sworn, testified in substance as follows:

My name is A. H. Melin. I live in New York City. At the present time I am secretary and treasurer of the Amalgamated Copper Company and have been since February, 1905. I am secretary and treasurer of the Anaconda Copper Mining Company; have been since 1911, I think, November. I was assistant secretary from 1905 until 1911. Prior to 1905, I lived in Montana and was auditor out there from 1893 until 1900, I think, of the Anaconda Company. No, I am mistaken there. I first was employed on the railroad, but in an auditing capacity. It was the Butte, Anaconda Pacific Railroad, I think for three years, and then went with the company itself. I think that was 1896. I think I came to New York in 1899, either 1899 or 1900. I assumed the same line of duty when I came here,—auditor of the

company and remained that until 1905, I think. I am not sure. At the time they took it over I was brought to New York. They wanted someone here who knew about the affairs in Montana. That is what I always understood. I came here at the time the Amalgamated Company acquired its stock in the Anaconda Company, about 1899 or 1900. The chief controlling factor in the Anaconda Copper Mining Company during the time that I was with it in Montana was Mr. Marcus Daly. As to other companies eventually going into the Amalgamated he was more or less prominently associated with Hamilton's Lumber Company, and I don't know but what the Big Blackfoot Milling Company, Diamond Coal & Coke Company. That was a little later. Mountain Trading Company, Washoe Company, Hennessy Mercantile Company and the Copper City Commercial Company. I have not available a copy of the articles of the Amalgamated Company. I have no copy of the articles in my files, that I know of. I have a copy of the Anaconda. I haven't a printed copy of the Amalgamated Articles. When I came here to New York, I don't know whether it was the Anaconda or the Boston and Montana company that was leading in the production of copper in the Butte camp. I should say the Anaconda was, as a matter of fact, far ahead of any of them. I am not positive about that. I could have a list of the original stockholders of the Amalgamated made for you. I have not got such a thing. I would have to go to Jersey City, I think for that. I don't

keep any stock books. The bank has the stock books—National City Bank. No, sir, I don't keep in the office here any record of who the stockholders are. The only books here are the working books, the ledger and books of account. From the record that I have I have no means of telling what properties the Amalgamated Copper Company acquired upon its incorporation. I don't know who would have that record. I don't know where I could get a list of the stocks acquired at the time the Amalgamated was formed. Yes, we were advised by Mr. Ryan yesterday that the Amalgamated stock was listed upon the Stock Exchange, and that in connection with the listing of the stock on the Exchange, it became necessary to supply to it a list of the properties owned by it, but that was before my time, though. I don't know of any copy of the documents thus filed with the Stock Exchange on file in our office. The only copy I have is when the capital stock of the Anaconda was increased. That is the only list I have got. Well, the Amalgamated bought the majority interest of the Anaconda in that trade I know, the exact amount I think was 620,000 shares. I am not clear about that, but I can verify it. That is my recollection 610 or 620,000 shares. I ought to be able to dig up the record of that. I cannot say offhand where it is. If I had been secretary at that time my records as a matter of course ought to show what I paid out and what I paid it for. I succeeded to the office of the former secretary, and he turned over the books to me. I have no

doubt I can get a statement of that. It was 620,000 shares of Anaconda; all of the shares of the Washoe Copper Company; all of the shares of the Big Black Foot Milling Company. I think; the majority of the shares of the Boston and Montana Consolidated Mining Company and a majority of the shares of the Butte and Boston Consolidated Mining Company. I don't know about the Parrot. I am not clear on that. If I knew just where to lay my hands on it, I should say it would take me about an hour to examine the records so that I could come with the memorandum to tell about this, the exact number of shares in the companies. I have not a copy of the advertisement printed in the public press over the signature of the National City Bank, advising the public of the organization of the Amalgamated and inviting subscriptions to its stock. I don't recall it. It certainly was not turned over in the files to me, and I never saw the circular that you speak of. I have the record of the proceedings of the directors and stockholders. (Witness produces book).

MR. WALSH: I want to offer the proceedings of the first meeting of the stockholders and the first meeting of the directors of the company.

Thereupon, the defendants, by their counsel, objected to the receipt in evidence of the minutes and proceedings of the first meeting of the stockholders of the Amalgamated Copper Company, and the first meeting of the Board of Directors of said Company, so offered in evidence, upon the ground that they, and each of them, were incom-

